

No. 356

**FISH & GAME—FUR-BEARING ANIMALS—ANIMALS—
DOMESTICALLY RAISED FUR-BEARING ANIMALS**

Held: Sections 3731, 3734 and 3777 of the Revised Codes of Montana of 1935 and Sections 3742 of the Revised Codes of Montana, 1935, as amended by Chapter 22 of the Laws of 1941, have no application to the business of owning, using and propagating fur-bearing animals, the foundation stock of which were domestically raised, rather than captured wild.

February 5, 1942.

Mr. Leonard A. Schulz
County Attorney
Beaverhead County
Dillon, Montana

Dear Mr. Schulz:

We have your request for an opinion on the following questions:

"Is the business of owning and propagating fur-bearing animals, principally mink and foxes, the foundation stock of which were domestically raised rather than captured wild, subject to the regulations of the State Fish and Game Warden, as provided in Section 3777, Revised Codes of Montana, 1935? (b) Is it necessary that a permit be obtained from the State Game Warden to ship the skins taken from such domestically raised animals, as provided by Sections 3731 and 3734, Revised Codes of Montana, 1935, and Chapter 22 of the 1941 Session Laws?"

Section 3777 of the Revised Codes of Montana of 1935, by its terms, relates to the "business or occupation of propagating, owning and controlling wild game birds, game and furbearing animals of the state of Montana . . ." It appears the adjective "wild" relates to "fur-bearing animals," as well as to the preceding nouns. With respect to the regulatory provisions of Sections 3731 and 3734 of the Revised Codes of Montana of 1935 and Section 3742 of said code, as amended by Chapter 22 of the Laws of 1941, we find such provisions also apparently relate to **wild** fur-bearing animals protected by the laws of this state or coming from without the state.

The game laws of the state were not intended to protect or regulate domesticated fur-bearing animals which are, for all intents and purposes, "livestock" such as other domestic animals, as distinguished from animals *ferae naturae*, the property rights in which are defeated on the return to natural state. (3 C. J. S. 1088.) This conclusion is in line with your statement the animals about which you inquire are assessed and taxed as livestock, including a special levy for the State Livestock Commission and the Livestock Sanitary Board. It is my understanding—from your state of facts—the animals about which you inquire are in no sense wild animals.

In Montana it is held the ownership of wild animals is in the state and neither such animals nor parts thereof are subject to private ownership, except insofar as the state may choose to make them so. (*Rosenfeld v. Jakways et al.*, 67 Mont. 558, 562, 216 Pac. 776.) The court in that case said further:

"If the state so elects it may prohibit absolutely the killing of such animals (wild animals) or it may regulate the killing and prohibit the sale in this state of such animals or their parts, whether the animals were killed within or without the state."

Obviously this does not apply to certain instances of game running or killed on Indian reservations.

It is apparent the regulations relating to fish and game and the functions of the Fish and Game Department and the State Game Warden relate to wild animals and not to animals domitae naturae such as those to which your questions relate.

Accordingly, it is my opinion Sections 3731, 3734 and 3777 of the Revised Codes of Montana, 1935, and Section 3742, of the Revised Codes of Montana, 1935, as amended by Chapter 22 of the laws of 1941, have no application to the business of owning, controlling, using and propagating fur-bearing animals, the foundation stock of which were domestically raised, rather than captured wild.

Sincerely yours,

JOHN W. BONNER
Attorney General