

Opinion No. 45

**FISH AND GAME COMMISSION; Powers; ice fishing, regulation of—
FISH AND GAME COMMISSION; Powers; private waters, au-
thority to regulate use under agreement with owners—FISH
AND GAME COMMISSION; Powers; sanitary regulations,
must have Board of Health approval—Section 26-104,
RCM, 1947**

- Held: 1. The State Fish and Game Department has authority to regulate the use and abandonment of ice-fishing facilities after proper findings of fact and pursuant to an agreement with the owner of the private waters involved.**
- 2. Rules relative to safety and protection of property may be made effective immediately upon their passage by the Commission. Regulations relating to public health and sanitation must be approved by the State Board of Health before becoming legally operative.**

November 19, 1959

Mr. W. J. Everin, Director
State Fish and Game Department
Capitol Building
Helena, Montana

Dear Mr. Everin:

You have requested my opinion concerning the extent of the State Fish and Game Commission's rule-making power under Section 26-104 (26), RCM, 1947, as amended, which provides in part:

"It (Commission) shall have authority to promulgate and enforce rules and regulations governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with a federal or state agency or private owner."

You have advised me that large quantities of floating debris on Georgetown Lake caused by a failure to remove materials used in the construction of winter ice-fishing houses results in an annual sanitation and safety hazard to the inhabitants of Anaconda, Montana, which city obtains a portion of its water supply from said lake. You have also informed me that Georgetown Lake is privately owned and that your department has entered no agreement with the owner relative to the use and operation of the lake.

Section 26-104 (26), RCM, 1947, contemplates regulation by the Fish and Game Commission of reservoirs which it operates under agreement with a private owner. This law enables the Commission to

enter into cooperative agreements with owners of private waters and to promulgate reasonable rules and regulations relative to the recreational uses of such waters pursuant to these agreements.

Section 26-104 (26) further states:

"Such rules shall be promulgated in the interest of the public health, public safety, and protection of property in regulating swimming, boating, water skiing, surf boarding, picnicking, camping, sanitation and use of firearms on such reservoirs or at designated areas along the shores of such reservoirs. These rules shall be subject to review and approval by the state board of health as to public health and sanitation before becoming effective. Copies of such rules shall show such endorsement."

It is therefore my opinion that the State Fish and Game Commission has authority to promulgate reasonable rules and regulations relative to the proper use and abandonment of ice-fishing facilities if it finds by an investigation of the facts a need for such rules and if an operating agreement is entered into with the owner of the private waters involved. You have submitted a proposed regulation which appears reasonably adapted to proper disposition of the dangerous and undesirable conditions set forth in your letter. Such rules promulgated in the interest of public safety and the protection of property may become effective immediately upon their passage by the Commission. However, under the above statute, regulations relative to public health and sanitation are subject to approval by the State Board of Health before becoming legally operative.

Very truly yours,
FORREST H. ANDERSON
Attorney General