

Opinion No. 57-150

June 25, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,
Assistant Attorney General

TO: Mr. A. J. Garner, Assistant Director, Department of Game and Fish, Santa Fe, New Mexico

QUESTIONS

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Is a minnow and non-game fish dealer, who does not take minnows and non-game fish from public waters, required to furnish a bond to secure a minnow and non-game fish dealer license?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 53-3-19, N.M.S.A., 1953 (Pocket Supplement), provides:

"Hereafter it shall be unlawful for any person, except children under the age of fifteen (15) years to take from the streams or public waters of this state minnows and non-game fish for the purpose of sale to fishermen or others for bait, without having first procured from the state game commission of the state of New Mexico a license therefor as provided in this act (53-3-19 through 53-3-22)."

And, Section 53-3-20, N.M.S.A., 1953 (Pocket Supplement), in part reads:

"Any person desiring to procure a license for the purpose of engaging in the business of selling minnows and non-game fish for bait or taking minnows and non-game fish from the streams of this state for the purpose of sale to others shall apply to the state game commission of the state of New Mexico for such license"

Section 53-3-19, would seem to point to the conclusion that only those who take minnows and non-game fish from public waters are required to be licensed. However, it is noted that the first sentence of Section 53-3-20, is phrased in the disjunctive, and the application of this statute is to those engaged in the business of selling minnows and non-game fish **or** to those who take the minnows and non-game fish from the streams

of the State. Thus not only those who take minnows from the streams are to be licensed and bonded, but also those who otherwise engage in the business of selling them irrespective of where they were originally secured. And if one taking minnows or other non-game fish from private waters sells them it would appear to us that he is engaging in a business for which a license and bond are required.