

## Opinion No. 23-3702

May 8, 1923

**BY:** JOHN W. ARMSTRONG, Assistant Attorney General

**TO:** Requested by: Mrs. Grace B. Melaven, State Game & Fish Warden, Santa Fe, New Mexico.

### **Persons Other Than the Owner of the Lands May not Fish on Privately Owned Lands During Closed Season or Without License.**

#### **OPINION**

{\*52} We quote your inquiry as follows:

"A ruling is respectfully requested as to the authority and administrative power of the State Game and Fish Warden in the enforcement of the State Game and Fish Laws upon privately owned irrigation projects, reservoirs or lakes, in which we cite you the following concrete example:

The Story Irrigation Project (also known as the Sanguijuela Reservoir) is owned by a corporation known as the Las Vegas Land and Water Company, of Las Vegas, New Mexico, and receives its water supply from the Gallinas River and the Sanguijuela Arroyo. Said lake is stocked with game fish and it is contended by some of the citizens of Las Vegas that the State Game and Fish Warden has no jurisdiction on the lake as to the enforcement of the laws pertaining to open and closed seasons. I recognize the rights of the owners of such projects to allow no persons except those to whom they issue permits to fish; but contend that they cannot lawfully permit fishing during the closed season set by the state game and fish laws, and that the State Game and Fish Warden, or any of her deputies, has the right to enter upon said premises at any time for the purpose of enforcing the law."

We are assuming that this Project is not licensed under the provisions of Sections 2482 to 2506, incl., New Mexico Statutes, Codification 1915. In event such Project is not duly licensed, the owner thereof is subject to all the restrictions of the State game and fish laws the same as any other individual.

The owner or proprietor may, however, procure a license under aforesaid Act relating to parks and lakes, which will give him certain additional privileges. This Act was amended by Section 18, Chapter 101, Session Laws of 1915, but the scope of this latter section is somewhat circumscribed by Section 10, Chapter 133, Session Laws of 1919 and other Acts subsequent to said Section 18 of the Session Laws of 1915.

Chapter 133 of the Session Laws of 1919 provides that it shall be unlawful for any licensee of any park or lake to sell at any time any trout taken therefrom. This provision modifies the 1915 Act with reference to sale of trout.

Anyone before being authorized to fish on such Project must first have a valid and subsisting license and, under no circumstances, would such person be permitted to fish during closed season.

Further, the law gives your Department full authority and jurisdiction over said Project for the enforcement of the game and fish laws. There is no doubt of your right to go upon said Project for that purpose.

{\*53} "The police power of the State extends in the direction of so regulating the use of private property or of so restraining personal action as manifestly to secure or tend to the comfort, prosperity or protection of the community." -- State v. Theriault, 32 L. R. A., 294.

"Someone has suggested that the state had no right to send the fish and game commissioners upon Mr. Hale's land to stock the stream. The law is paramount to his property and rights. within the inhibitions of the state and national Constitutions. As well might he contend that the law could not send its officer upon his land to arrest him for a criminal act, or to attach his property at the suit of a creditor. On any view, even if the owner of the land over which the stream flows had been the violator of the law, and was under prosecution, this statute must be held constitutional and enforceable." State v. Theriault, 43 L. R. A., 295.

The case of State v. Theriault contains many citations upholding our opinion herein.