

Opinion No. 34-732

February 21, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. Elliott S. Barker, State Game Warden, Santa Fe, New Mexico.

{*118} In a recent letter requesting an opinion from this office you present the following state of facts:

"A lake permit has been applied for under authority of law above referred to by a party who has lakes or ponds fed entirely by developed water, not having any connection whatever with public waters and the fish for stocking purposes will be secured by legal purchase; thus holding the fish in private ownership.

"The applicant for this license desires to dispose of fish by permitting the public to fish for and catch the fish with hook and line, charging either a stipulated price per pound, or per fish."

Section 57-217, 1929 Code provides that, "No person shall at any time shoot, hunt, kill, injure or take in any manner any game animal or game fish without having in possession a license as herein provided, etc." I have also examined the other statutes referred to in your letter.

The question presented by you is whether or not a person other than the owner, who fishes in such a lake with the owner's consent must have a state fishing license. In my opinion, he is not required to have such a license. Such fish are the private property of the owner of the lake and he may treat them as such. See Peo vs. Conrad et al, 125 Mich. 1, 83 N.W. 1012; St. vs. Roberts, 59 N. H. 256, 47 Am. R. 199, Peo vs. Lewis, 227 Mich. 343, 198 N.W. 957; note 131 Am. St. Rep. 750; 26 C. J. 599 and cases cited.

Trusting that the above gives you the information desired, I am

By: QUINCY D. ADAMS,

Asst. Attorney General