

FISH AND GAME: Game fish, taken from waters of another State can be sold in Missouri (Section 8275)

April 27, 1938

Honorable Elbert L. Ford
Prosecuting Attorney
Dunklin County
Kennett, Missouri



Dear Sir:

This will acknowledge your inquiry of the 22d, which reads as follows:

"I would appreciate you sending me an opinion on your construction of Section 8275, Revised Statutes Missouri 1929.

"A few days ago the Constable at Campbell, arrested a peddler of catfish. The fish were taken from the waters of the State of Arkansas, and were being offered for sale on the streets of Campbell. The Constable arrested the defendant at the request of the Game Warden, a Mr. Jones, from Charleston, Missouri, who contends that even though game fish were caught in another State, if sold in this State it is a violation of this section.

"My contention is that in order to violate Section 8275, fish must have been 'caught or taken from the waters of this State.'

"They have this party arrested under two charges, one for the sale and offering for sale of said catfish and

the other for selling without first having and obtaining a State and County license. The County has never set any license for fish peddling and the City of Campbell has no license, and my contention is that this man has violated no law and should be released and the Game Warden is desirous of obtaining an opinion from your office before dismissing this case.

The portion of Section 8275, R. S. Mo. 1929 which is pertinent to your question, reads as follows:

"It shall be unlawful for any person, firm or corporation, to offer for sale, sell, or ship for market purposes, when caught or taken from the waters of this state, any game fish. *** "

The statute is leveled against the sale of game fish "when caught or taken from the waters of this state." The language is clear. To violate this portion of the statute, a person would have to offer for sale, sell or ship for market purposes, game fish caught or taken from the waters of this state.

It is a familiar rule that criminal statutes are to be strictly construed. State vs. Owens, 268 Mo. 481. The courts cannot read into criminal statutes crimes that are not therein defined.

There is no provision in the law for obtaining a state license to sell fish, or making it a crime to sell fish without such a license. Your letter states that no license is required by your city, nor by the city of Campbell to sell fish.

Hon. Elbert L. Ford

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CONCLUSION.

It is, therefore, the opinion of this office that the man mentioned in your letter has violated no law of this state and is therefore not subject to prosecution under the facts outlined in your letter.

Yours very truly

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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