

OPINION NO. 180  
(Answered by Letter--  
Nowotny)

March 20, 1967



Honorable James A. Noland, Jr.  
Representative, District 140  
Capitol Building  
Jefferson City, Missouri

Dear Representative Noland:

This is in answer to your request for an opinion of this office, which request reads as follows:

"I am asking you for an opinion regarding a conflict of tax matter. It concerns a person raising commercial fish within the bounds of his own property with none of the Federal stock being so situated as to come in contact with any fish in the public streams of Missouri; the said stock being purchased from areas outside the state of Missouri, being solely raised for the purpose of being processed for food. Are these fish subject to control of the Conservation Commission and also subject to the paying of fees to the Conservation Commission for raising of said fish, when the stock is assessed as personal property the same as poultry and livestock and other domestic animals in Missouri?"

Your question is whether a person raising these fish must obtain a wildlife breeder's permit from the Conservation Commission and also pay personal property tax on the fish when these fish are property of the state.

Enclosed is a copy of Attorney General Opinion No. 15, dated March 22, 1955, to the Honorable John R. Caslavaka, which answers the same question in relation to captive minks. That opinion held captive minks that are wildlife and kept by a private individual for commercial purposes, even though subject to regulation by the Conservation Commission, are taxable personal property.

Honorable James A. Noland, Jr.

Also enclosed is a copy of Attorney General Opinion No. 21, dated July 6, 1955, to the Honorable Dick B. Dale, Jr., which holds that fish purchased and used to stock private commercial fishing ponds are wildlife and that the owner of the pond must obtain a wildlife breeder's permit.

In view of these two opinions, it is our opinion that a person raising fish as described in your request must obtain a wildlife breeder's permit.

This person is not liable for a tangible personal property tax on these fish because he is subject to a merchants license tax. Section 137.115, RSMo 1959, provides an exemption from the personal property tax on merchandise upon which a person is required to pay a merchants tax.

Enclosed is Attorney General Opinion No. 21, dated July 20, 1961, to the Honorable Bill Davenport, which holds that minnows in possession of a licensed, privately owned, minnow hatchery are not to be assessed as personal property but rather are to be assessed and taxed under the merchants tax as set out in Sections 150.010 through 150.070, RSMo. Also enclosed is Attorney General Opinion, dated September 20, 1950, to the Honorable Clarence Evans, upon which Opinion No. 21 is based.

In view of Opinion No. 21, it is our opinion that in the situation described in your request such a person must pay a merchants tax and obtain a merchants license.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

WWN/jlf  
Enc.--4

Op. No. 15, Caslavaka, 3/22/55  
Op. No. 21, Dale, 7/6/55  
Op. No. 21, Davenport, 7/20/61  
Op., Evans, 9/20/50