

Opinion No. 20-2631

July 2, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. Thomas P. Gable, State Game and Fish Warden, Santa Fe, New Mexico.

Fishing in Public Streams.

OPINION

We have your letter of even date suggesting that the opinion rendered you under date of July 1st in regard to the right of a person to fish in that part of a stream covered by a stream license without the consent of the person holding such license is not quite clear.

As stated in our letter of yesterday, the question is whether the provisions of Section 3, Chapter 133, Laws 1919, which provides that no one may fish or hunt in a stream or within a park or enclosure licensed under the provisions of the Stream or Park License Act, is in conflict with the Constitution providing that the waters of the State belong to the public, and it might also be suggested that the provisions of this Act constitute special legislation in favor of the person holding the park or stream license as against all the remainder of the people of the state, and therefore is a violation of Section 24, Article IV of the Constitution.

Chapter 133, Laws 1919 is a law upon the statute books, and until it or some of its provisions have been declared to be invalid or unconstitutional, it is our suggestion that the same should be enforced in all its particulars, and therefore, that a person holding a permit or stream license can validly prevent other persons from walking or wading up the middle of a stream within the enclosure described in the stream license or permit and taking fish from the waters of such stream.

Trusting that the foregoing satisfactorily answers your inquiry, we are,