

FISH AND FISHING: Licenses.

State licenses to fish are required in inland lakes and streams which are Federal navigable waters.

The authority of the Federal government and its agencies such as the U.S. Coast Guard is restricted to regulation of commerce in said waters among the States and incidents thereof, pursuant to the Interstate Commerce clause of the Federal Constitution and the laws passed by Congress.

No. 4112

February 4, 1963.

The Honorable Clarence B. Meggison
207 Stover Road
Charlevoix, Michigan

While you were a State Representative you requested my opinion on the following question:

“Can the Michigan Department of Conservation hold anyone responsible for not having a fishing license, if fishing on an inland lake which is classified as being federal water?”

You state that both Lake Charlevoix in Charlevoix County and Elk Lake in Antrim County, which are inland lakes, are classified as federal waters and subject in part to federal supervision by the U. S. Coast Guard patrol in the interest of safety for the public.

Your question involves consideration of two separate rights pertaining to the waters within the boundary of the State of Michigan, namely, the sovereign rights of the State of Michigan in the fish and wild game in these waters and the rights pertaining to these waters lodged in the Federal Government under the United States Constitution.

The jurisdiction of the State of Michigan is coextensive with its territory and its legislative power.¹

In *People v. Setunsky*, 161 Mich. 624, 628, the Court said:

“That the legislature has power to regulate the taking of fish and game within the confines of the State, and the waters that it owns, is unquestionable * * *. It is upheld by the decisions of the Federal and State courts generally, and has been so held in this State. * * * *Geer v. Connecticut*, 161 U.S. 519 (16 Sup. St. 600); *State v. Corson*, 67 N.J. Law 178 (50 Atl. 780); *Commonwealth v. Hilton*, 174 Mass. 29 (65 N.E. 362, 45 L.R.A. 475); *State v. Gallop*, 126 N.C. 979, 983 (35 S.E. 180); *Morgan v. Commonwealth*, 98 Va. 812 (35 S.E. 448); 19 Cyc. pp. 1006, 1012, 1019; *People v. Collison*, 85 Mich. 105 (48 N.W. 292); *People v. Horling*, 137 Mich. 406, 414 (100 N.W. 691).”

The United States Supreme Court in *LaCoste v. Department of Conservation of the State of Louisiana*, 263 U.S. 545,² summarized the law as follows:

“The wild animals within its borders are, so far as capable of owner-

¹ *United States v. Bevans*, 3 Wheat (16 US) 336, 387, 4 L. ed. 404, 416.

² 68 L. ed. 437.

ship, owned by the State in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power the State may regulate and control the taking, subsequent use and property rights that may be acquired therein. *Geer v. Connecticut*, 161 U.S. 519, 528; *Ward v. Race Horse*, 163 U.S. 504, 507; *Silz v. Hesterberg*, 211 U.S. 31, 39; *Patsone v. Pennsylvania*, 232 U.S. 138, 143; *Kennedy v. Becker*, 241 U.S. 556, 562; *Carey v. South Dakota*, 250 U.S. 118; *State v. Rodman*, 58 Minn. 393, 400."

It was settled by the Supreme Court of Michigan in *Collins v. Gerhardt*, 237 Mich. 38, that the State owns the water and fish, so far as they are capable of ownership, in the navigable waters of Michigan "for the common benefit of the people."

In *People v. Setunsky*, supra, at page 629, the Court said:

"We have held that the regulation of the taking of game and fishing within our territory is not an interference with interstate commerce."

This holding is consonant with that of the United States Supreme Court in *Geer v. Connecticut*, 161 U.S. 519,³ and *Toomer v. Witsell*, 334 U.S. 385,⁴

The basic premise relative to State and Federal control of the navigable waters of the United States is stated in *U. S. v. Appalachian Electric Power Co.*, 311 U.S. 377,⁵ as follows:

"The states possess control of the waters within their borders, 'subject to the acknowledged jurisdiction of the United States under the Constitution in regard to commerce and the navigation of the waters of rivers.' It is this subordinate local control that, even as to navigable rivers, creates between the respective governments a contrariness of interests relating to the regulation and protection of waters through licenses, the operation of structures and the acquisition of projects at the end of the license term. * * *

"In our view, it cannot properly be said that the constitutional power of the United States over its waters is limited to control for navigation. By navigation respondent means no more than operation of boats and improvement of the waterway itself. In truth the authority of the United States is in the regulation of commerce on its waters. Navigability, in the sense just stated, is but a part of this whole. Flood protection, watershed development, recovery of cost of improvements through utilization of power are likewise parts of commerce control."

The instances where the Congress has exerted its dominion over the waters within the boundaries of the State of Michigan are numerous.⁶ We

³ 40 L. ed. 793.

⁴ 92 L. ed. 1460.

⁵ 85 L. ed. 243.

⁶ For example: The term "navigable waters of the United States" is used in the Federal Boating Act of 1958, 75 Stat. 1754, et seq. (46 U.S.C.A. 1962 Supp. Sections 527a and 527e); the Federal Motorboat Act of 1940, 54 Stat. 163, et seq. (46 U.S.C.A. Sections 526 et seq.). In each of these Acts, the term "navigable waters of the United States" is used to describe the body of water

know of no Act of Congress regulating fishing within the boundaries of Michigan or any Act of Congress that conflicts with the sovereign right of the state to regulate fishing in the waters of this State.

We think the question you raise was answered by the United States Supreme Court in *Manchester v. Massachusetts*, 139 U.S. 240, at page 262,⁷ where it said:

"In the case of *Stockton v. Baltimore & N.Y.R. Co.*, 32 Fed. Rep. 9, in the Circuit Court for the District of New Jersey, Mr. Justice Bradley shows clearly that there is no necessary conflict between the right of the State to regulate the fisheries in a given locality and the right of the United States to regulate commerce and navigation in the same locality. He says that, prior to the Revolution, the shore and lands under water of the navigable streams and waters of the Province of New Jersey belonged to the King of Great Britain, and, after the conquest, those lands were held by the State, as they were by the King, in trust for the public uses of navigation and fishery. * * * 'It is true that to utilize the fisheries, especially those of shell fish, it was necessary to parcel them out to particular operations. * * * The power to regulate commerce is the basis of the power to regulate navigation and navigable waters and streams. . . . So wide and extensive is the operation of this power that no State can place any obstruction in or upon any navigable waters against the will of Congress.' The doctrine has always been firmly maintained by this court, that whenever a conflict arises between a State and the United States, as to the regulation of commerce or navigation, the authority of the latter is supreme and controlling."

You are advised that those persons fishing on Elk Lake and Lake Charlevoix are required to comply with the fishing laws of this State.

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Attorney General.

over which the Federal government has exerted its jurisdiction for the purposes only of the subject matter of each act.

The rules and regulations with respect to general duties and jurisdiction of the Coast Guard in the administration and enforcement of navigation and vessel inspection laws recognizes this limitation. See 33 C.F.R. 2.10-5.

⁷ 35 L. ed. 159, 166.