

OPINION
51-72

September 13, 1951 (OPINION)

GAME AND FISH

RE: Responsibility of Merchant Selling Licenses

Your letter of the twelfth inst. re above statute has been referred to my desk.

The material facts as stated in your letter are thus:

On May 16, Mr. M. F. Christopherson, a merchant at Regent, took out a supply of fishing license books for sale at his store as he has been doing for many years. On May twenty-seventh his store was burglarized and among other things \$51.00 of this license money was taken. This money was kept in a separate place and was not included in the money in the cash register. According to chapter 20-0321 of the 1943 S.L. there seems to be no provision to protect an agent in a case of this kind. However it seems that there should be some way to avoid an individual from being penalized in a matter which is entirely beyond his control, and which could happen anywhere this license money might be located.

The statute provides that various game and fish licenses may be issued by the several county auditors. The custom has been followed many years for the convenience of the public by the county auditors of placing blank licenses with the merchants in the several cities and villages of his county. Such merchants report sales to the auditor who in turn reports to the Game and Fish Commissioner. The auditor is primarily liable to the Commissioner for license fees collected, less the auditor's fee, authorized by law. If the auditor embezzles these funds, he is criminally liable. The law does not make him criminally liable for loss of these funds by reason of flood, fire, robbery or theft.

Therefore it is our opinion that if this money is stolen from the auditor without gross negligence on his part in the safekeeping of the money, he would not be held personally for the amount stolen. And it is further our opinion that the same rule would protect the merchant who, simply as an accommodation to both the auditor and the public issues such license. If he embezzles these fees, he is criminally liable, but if he loses them without gross negligence, by flood, fire, robbery, burglary, or other theft, he is not personally liable. Neither he nor the auditor are absolute guarantors of the safety of these funds. If they use such care as they do of their own funds, that is all that the law requires.

ELMO T. CHRISTIANSON

Attorney General