



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 30, 1939

Mr. L. L. Geren
County Attorney
Limestone County
Groesbeck, Texas

Dear Sir:

Opinion No. O-503

Re: What disposition should be made of
the money received as fine in case prosecuted under Article 688 of the Penal
Code?

Your request for an opinion on the above stated question has been received by this office.

We want to thank you for the very able brief submitted with your inquiry which has been of assistance in passing upon your question.

We quote from your letter as follows:

"In Cause No. 2768 in the County Court of Limestone County, State of Texas vs. Don Foster, the defendant entered a plea of guilty and the court assessed a fine of \$150.00. Said sum was remitted to the Sheriff of Limestone County by the defendant and is still in the custody of the Sheriff's Office. The Game, Fish and Oyster Commission of Texas has demanded of the Sheriff 90% of said \$150.00."

Article 689 of the Penal Code reads as follows:

"It shall be unlawful for any person, firm or corporation, private or municipal to pollute any water course or other public body of water, by throwing, casting or depositing, or causing to be thrown, cast or deposited any crude petroleum, oil or other like substance therein, or to pollute any water course, or other public body

of water, from which water is taken for the use of farm live stock, drinking and domestic purposes, in the State of Texas, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein, or in such proximity thereto as that it will probably reach and pollute the water of such water course or other public body of water from which water is taken, for the uses of farm live stock, drinking and domestic purposes; provided, however, that the provisions of this bill shall not affect any municipal corporation situated on tide waters; that is to say, where the tide ebbs and flows in such water course; provided, however, that no city located on tide water shall discharge or permit to be discharged sewerage, oil or any other effluents into public tide waters of this State when such discharge will become a menace to or endangers the oyster beds or fish life in such waters, or when such discharge becomes a menace to the bathing placed in such waters; and provided further that drain ditches, where waste oil finds its way into water courses or public bodies of water, shall be equipped with traps of sufficient capacity to arrest the flow of oil. In so far as concerns the protection of fish and oysters, the Game, Fish and Oyster Commissioner,¹ or his deputies, may have jurisdiction in the enforcement of this chapter. A violation of any of the provisions of this chapter shall be punished by a fine of not less than one hundred dollars and not more than one thousand dollars. When the offense shall have been committed by a firm, partnership or association, each member thereof who has knowledge of the commission of such offense, shall be held guilty. When committed by a private corporation, the officers and members of the board of directors, having knowledge of the commission of such offense, shall each be deemed guilty; and when by a municipal corporation the mayor and each member

of the board of aldermen or commission, having knowledge of the commission of such offense, as the case may be, shall be held guilty as representatives of the municipality; and each person so indicated as above shall be subject to the punishment provided hereinbefore; provided, however, that the payment of the fine by one of the persons so named shall be a satisfaction of the penalty as against his associates for the offense for which he may have been convicted. Each day such pollution is knowingly caused or permitted shall constitute a separate offense; provided, the provisions of this article shall not apply to any place or premises of manufacturing plants whose affluents contain no organic matter that will putrify, or any poisonous compounds, or any bacteria dangerous to public health or destructive of the fish life of streams or other public bodies of water.

L-Office of Game, Fish and Oyster Commissioner was abolished and powers, duties and functions transferred to Game, Fish and Oyster Commission. See Article 978f, post."

Article 949 of the Code of Criminal Procedure provides:

"Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same."

Article 912 of the Penal Code reads as follows:

"It shall be the duty of any justice of the peace, clerk of any court, or any other officer of this State, receiving any fine or

penalty imposed by any court for violation of any of the laws of this State, pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters, and other wild life, within ten days from and after the receipt or collection of such fine or penalty, to remit same to the Game, Fish and Oyster Commission at Austin, giving docket number of case, name of person fined, and section or article of the law under which conviction was secured, when such laws are required to be enforced by the Game, Fish and Oyster Commission."

Article 4025, Revised Civil Statutes, reads as follows:

"Of all fines collected for infraction of the fish and oyster laws, ten per cent shall go to the prosecuting attorney, and the residue thereof shall go to the general fund of this State. All funds collected by deputy commissioners along the coast for register certificates, licenses, and rents for locating private oyster beds, and such other charges relating to the fish and oyster laws as may be prescribed, shall be by such deputies paid over weekly to the Commissioner, who in turn shall deposit the same monthly in the State Treasury to the credit of the general revenue fund."

A copy of the original information which is attached to your inquiry contains three counts, all based upon various portions of Article 698 of the Penal Code. The first count charges generally the pollution of the Navasota River by casting, etc., polluting matters therein. The second count charges a pollution of the Navasota River and further alleges that some river water was then and there taken for the use of farm live stock and for drinking and domestic purposes and the third count charges the failure of defendant to equip and maintain his drain ditches with proper traps. There is no allegation in the information that the alleged pollution was harmful to aquatic life or marine organisms. We do not find any allegation which

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we can construe as an infraction of the Game and Oyster Laws or any of the laws of this State pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters and other wild life.

We think that the provisions of Article 698, Penal Code, giving to the Game, Fish and Oyster Commission jurisdiction in the enforcement of this chapter insofar as it concerns the protection of fish and oysters, by inference, denies to that department jurisdiction in the enforcement of that chapter insofar as it does not concern the protection of fish and oysters.

Article 949, Code of Criminal Procedure, supra, is the general law laid down by the Legislature covering the disposition of fines collected by an officer and should be followed in the absence of any statutes pertinent to the prosecution on question. We have been unable to find any statutes under which the Commission is making its claim for 90% of the fines now in your custody. We conclude that such claim is based upon Article 4025, Revised Civil Statutes of Texas, Article 912 of the Penal Code and Article 698a of the Penal Code.

Article 698a of the Penal Code provides for the remission of fines collected thereunder to the Commission. This Article is separate and distinct from Article 698 of the Penal Code and differs materially therefrom in the criminal acts it seeks to prohibit. We are of the opinion that the provisions in Article 698a providing for the remission of fines imposed for violations of that act to the Game, Fish and Oyster Commission has no application to fines imposed for violations of Article 698 of the Penal Code.

After an examination of Article 698 of the Penal Code, we find that this statute sets forth and defines several different criminal offenses and find only one provision which can be construed as a fish and oyster law or provision pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters and other wild life. That provision is:

"That no city located on the tide water

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shall discharge or permit to be discharged sewerage, oil or any other effluents into public tide waters of this State when such discharge will become a menace to or engangers the oyster beds or fish life in such waters...."

The information does not expressly or by inference charge a violation of the above quoted provision.

In view of the foregoing statutes, you are respectfully advised that it is the opinion of this Department that money collected as fines in cases prosecuted under Article 698 of the Penal Code should be deposited with the County Treasurer in the county where such cases are tried after deduction of the legal fees and commissions allowed for collecting the same and that the Game, Fish and Oyster Commission is not entitled to any part of such fines except in cases where there is a violation of the Game and Fish Laws and the complaint and information is filed charging such violations.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

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APPROVED:

H. F. Moore
FIRST ASSISTANT ATTORNEY GENERAL