



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Allen C. Wilson  
County Attorney  
Kendall County  
Boerne, Texas

Dear Sir:

Opinion No. 0-578

Re: Does Article 4025 of the Revised Civil Statutes of Texas or Articles 950 and 951 of the Code of Criminal Procedure govern the retention of a portion of a fine collected for a violation of the game law.

We are in receipt of your letter of April 1, 1939, in which you request an opinion of this Department as to whether Article 4025 of the Revised Civil Statutes or Articles 950 and 951 of the Code of Criminal Procedure apply to fines collected for violations of the Game law.

Articles 950 and 951 of the Code of Criminal Procedure are general statutes concerning "commissions on collection" and said Articles have been on the statute books much longer than any of the other Articles we are concerned with here. These Articles read as follows:

"The district or county attorney shall be entitled to ten per cent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of the amount of said judgments, to be paid out of the amount when collected.

"The sheriff or other officer who collects money for the State or county, under

any provision of this Code, except jury fees, shall be entitled to retain five per cent thereof when collected."

Article 4025 of the Revised Civil Statutes concerns the Fish & Oyster Laws and was passed many years prior to the enactment of the Game Law in 1925. This Article is now a part of Title 67, which is entitled Fish, Oyster, Shell, etc., it 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 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."

The 39th Legislature in Regular Session in 1925 enacted what is commonly called the game law. This Act was entitled "Relating to the preservation and propagation of all wild animals, wild birds and wild fowls of this state." It was numbered Chapter 172. Section 42 of this Act is now Article 912 of the Penal Code, and 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."

On April 29, 1926, Honorable C. L. Stone, Assistant Attorney General, wrote an opinion on this question which reads, in part, as follows:

"Article 4025, Revised Civil Statutes of 1925, provides that of all fines collected for infractions of the Fish and Oyster laws, 10 per cent shall go to the prosecuting attorney and the residue thereof shall go to the general fund of this State. Our construction of this Statute is that 10 per cent of all fines collected for infractions of the Fish and Oyster laws of this State 10 per cent shall go to the prosecuting attorney, and that a justice of the peace, county clerk, sheriff, constable, or other person making the arrest would not be entitled to any part of such fines. This is a special statute and provides that 10 per cent shall go to the prosecuting attorney.

"As to infractions of the Game law, there does not appear to be any special provision made, and the provisions found in Articles 950 and 951, Code of Criminal Procedure, would govern where fines were collected for infractions or violation of the Game laws, \* \* \* \*"

On September 24, 1936, the Honorable Harry S. Pollard, Assistant Attorney General, wrote an opinion which overruled in part the opinion of Mr. Stone. A portion of this latter opinion reads as follows:

"The writer's attention has been directed by you to a letter opinion, dated May 1st, 1926, by D. L. Stone, who was at that time an Assistant Attorney General of Texas, which construes Articles 950 and 951 of the Code of Criminal Procedure to be applicable to criminal suits for infractions of the game laws. In the writer's opinion, such construction is erroneous, and therefore is hereby expressly overruled and withdrawn. Articles



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950 and 951, as amended, of the Code of Criminal Procedure, are general statutes which are applicable only in the absence of specific legislative enactments to the contrary. Article 912, Penal Code, supra, is clearly and unequivocally applicable to the specific subjects contained in its provisions, and it obviously evidences the intention of the Legislature that all fines or penalties derived from those criminal cases for violations of laws which pertain to the protection and conservation of the wild life of Texas, shall be remitted to the Game, Fish & Oyster Commission. In the writer's opinion, this last mentioned Article must be read and considered in conjunction with, and in the light of, the provisions of Article 4025, supra, which evidences the intention of the Legislature for the Game, Fish & Oyster Commission to retain all except 10 per cent of the fines and penalties which are required by law to be remitted to the Game, Fish & Oyster Commission, and that such 10 per cent is entitled to be received by the prosecuting attorney in each individual case."

Article 912 of the Penal Code was enacted to take care of the disposition of fines collected for violations of the Game law. It is the opinion of this Department that the question was correctly answered by Mr. Stone in his opinion. Articles 950 and 951 of the Code of Criminal Procedure are general statutes and would apply in the absence of any specific statute treating of the same subject matter. We cannot agree with Mr. Pollard's statement that Article 4025 of the Revised Civil Statutes applies to fines collected for violation of the Game law. This Article specifically applies to infractions of the Fish & Oyster Laws and makes no mention whatsoever of the Game laws. With the exception of the provision in Article 4025 for the retention of ten per cent of the fines as attorneys fees, Article 912 of the Penal Code treats of the same subject matter as Article 4025. Article 912 states that in cases where fines are received for violation of the Game laws the same should be remitted to the Game, Fish & 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". As Article 4025 does not

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apply to the Game laws, the general statute, namely Article 950 and Article 951 of the Code of Criminal Procedure, must be read into Article 912 of the Penal Code.

Our construction of Article 912 is further emphasized by Article 923qq of the Penal Code. This Article was originally Section 10 of Chapter 177, Acts of the 39th Legislature, 1926, and it went into effect the same day that Article 912 went into effect. The title of Chapter 177 was "Regulating the Killing, Trapping and Taking of Fur-Bearing Animals". Section 10 of said Act reads as follows:

"All moneys collected from the fines and penalties for the violation of this Act, and all moneys collected from the sale of trapper's licenses shall belong to the special game fund of this State, and shall be paid over by the Game, Fish, and Oyster Commissioner to the Treasurer of the State during the first week of each month, and shall be credited to such special game fund for the enforcement of this Act and the game laws in general, provided county attorneys shall receive ten per centum and officers making collection five per centum of any fines or fine assessed for violation of this Act."

It is the opinion of this Department that fines collected under the Game laws relating to fur-bearing animals should be remitted after deducting the commissions set out in Article 923qq. As to other violations of the Game laws, Article 912 would apply after the deduction of the commissions allowed in Articles 950 and 951 of the Code of Criminal Procedure.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Billy Goldberg*  
Billy Goldberg  
Assistant

BS:RS

APPROVED SEP 22, 1939

*Gerald Mann*  
ATTORNEY GENERAL OF TEXAS

APPROVED  
OPINION  
COMMITTEE