



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Mr. Wm. J. Tucker  
Executive Secretary  
Game, Fish and Oyster Commission  
Austin, Texas

Dear Mr. Tucker:

Opinion No. 8-1306

Re: What constitutes pollution  
of a bayou by sewage from  
a municipality and whether  
the Superintendent of the  
plant is subject to arrest.

We have your letter of August 21, requesting  
an opinion from this department and setting out certain  
facts, which we quote:

"A city disposal plant is located on  
a bayou where the tide ebbs and flows. The  
bayou at that point, and for a distance of a  
mile or so on either side, is not used for  
livestock, drinking, or domestic purposes.  
At a distance of about ten miles from the  
sewage plant, the bayou converges with another  
stream, the waters of which are sometimes used  
for livestock, drinking, and domestic purposes.  
There are no oyster beds or bathing places;  
nor is there any fish life in the immediate  
vicinity of the disposal plant, which is large-  
ly due to the condition created by the plant.  
Fish life is present at a distance of four to  
six miles down stream, and there are some  
bathing places located near the confluence of

the bayou with the fresh water stream.

"During the rainy season, the sewage plant by-passes sewage directly into the bayou without any treatment. Parties in charge of the plant explain that this is necessary because equipment is not sufficient to handle the flow when it is augmented by surface waters". (Underlining ours).

In this connection, you ask the following questions:

1. "Under the above conditions, would the municipality be guilty of polluting a public waterway under article 698 P. C., 1925?"

2. "Would a representative of the Game, Fish and Oyster Commission have authority to file a complaint against the Superintendent of the disposal plant if he has good reason to believe the law is being violated?"

The pertinent parts of Article 698, Vernon's Annotated Penal Code are 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 . . .; provided, however, that the provision of this bill shall not affect any municipal corporation situated on tide waters; that is to say, when the tide ebbs and flows in such water course; provided, however, that no city located on the tide water shall discharge or permit to be discharged sewage, 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 water, or when such discharge becomes a menace to the bathing places in such water. In so far as concerns the protection of fish and oysters,

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the Game, Fish and Oyster Commissioner, 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 municipal corporation, the mayor and each member of the board of aldermen or commission, having knowledge of the commission of such offense, shall be deemed guilty. . ." (underscoring ours).

Your questions taken together clearly indicate that the pollution you are interested in is only that for which a representative of the Game, Fish and Oyster Commission could file a complaint. By its terms, the above article authorizes the Game, Fish and Oyster Commissioner or his deputies to enforce same "in so far as it concerns the protection of fish and oysters." It does not authorize him or his deputies to enforce its provisions in so far as they make it a crime to "menace the bathing places in such waters". Neither does Article 4018, Vernon's R. C. S. of Texas, 1925, which defines the powers and duties of the Commissioner, give him or his deputies power to enforce said article in so far as it concerns bathing places; nor, is he given such power by law, in our opinion. Therefore, in answering your questions, we will not consider the facts stated by you, with regard to the location or absence of bathing beaches on the bayou.

The controlling facts stated by you are, that a city, which we assume to be a municipal corporation, discharges sewage from its disposal plant into the bayou upon which it is located and in which bayou, the tide ebbs and flows; and, that "largely due to the conditions created by the plant", there is no fish life in the immediate vicinity. From these facts we must determine whether or not, using the language of the Statute, the oyster beds and fish life in the bayou are menaced or endangered, since to menace and endanger same constitutes the gravamen of the offense.

It is a familiar rule of statutory construction

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that words used by the Legislature in a statute are to be given their usual meaning, unless that meaning is shaded or changed by the manner in which they are used in the particular statute; expressed another way, the rule is that "words of a statute are accorded the meaning that comports with the legislative intent". 39 Tex. Jur. 194. That rule, we think, is applicable to the words menace and endanger. Absent the definition of these terms by the courts, we rely upon their definitions as found in Webster's Unabridged Dictionary. There appears to be no reason here for extending or restricting their meaning beyond this natural import. *Oliver v. State*, 144 S. W. 604.

You say there is no fish life in the "immediate vicinity" of the disposal plant, but that it is present at a distance four to six miles downstream. We cannot tell from your statements just exactly how far away from the disposal plant the fish life is non-existent in the stream as a result of discharge of the sewage, but since the statute does not distinguish between degrees of "menacing and endangering" the fish life, we do not consider that material.

It is our conclusion, based upon your statement that there is no fish life in the immediate vicinity of the disposal plant and possibly for a distance of four miles from the plant, largely due to the condition created by the plant, that the fish life is menaced and endangered and that the bayou is being polluted and that the city referred to by you is guilty of the offense defined in said Article 696, supra. To reach this conclusion, we have assumed that there would be fish life in the bayou in the immediate vicinity of the disposal plant and between the disposal plant and the point where such fish life does exist, but for the discharge of sewage as described by you. This assumption seems reasonable and proper, in view of your statements. Therefore, it is the opinion of this department, and you are so advised, that the answer to your first question is in the affirmative.

Coming to your second question, Article 696 quoted herein, supra, provides who shall be held guilty and subject to punishment in case of a violation of its

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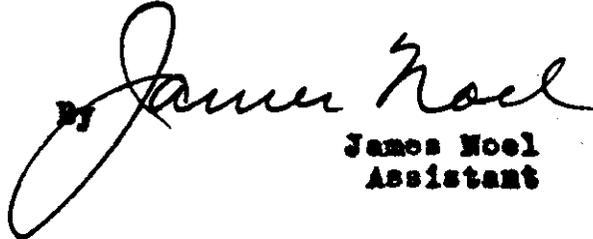
terms by a municipal corporation, namely, the mayor and each member of the Board of Aldermen or Commission. It does not include the Superintendent of the disposal plant. Since in Texas every penal offense must be made such and a punishment provided therefor by statute, and the superintendent of the disposal plant has not been made subject to punishment for the offense defined in Article 698, supra, it is the opinion of this department, and you are so advised, that the answer to your second question is in the negative. Penal Code, 1925, Art. 1-3.

The answer to your second question is based on the assumption that the superintendent of the city disposal plant is not also Mayor, or a member of the Board of Aldermen or City Commission. If he were, the question would require further consideration, and we do not answer it at this time.

Trusting that this satisfactorily answers your inquiry, we are

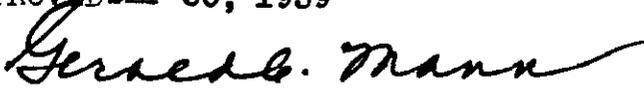
Yours very truly

ATTORNEY GENERAL OF TEXAS

  
By *James Noel*  
James Noel  
Assistant

JN:BT

APPROVED SEP 30, 1939

  
Gerald G. Mann  
ATTORNEY GENERAL OF TEXAS