



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MAHON  
ATTORNEY GENERAL

Honorable Thomas A. Wheat  
County Attorney  
Liberty County  
Liberty, Texas

Dear Sir:

Opinion No. O-3531  
Re: Does a violation of Art.  
951 of the Penal Code  
automatically cancel the  
fishing license of the  
fisherman?

We have received your letter of recent date request-  
ing our opinion upon the above stated question. Your letter  
reads, in part, as follows:

"Sometime back the Game Warden appre-  
hended a man for violation of the Game Laws  
and charged him with and he plead guilty to,  
a violation of Article 951 of the Penal Code,  
which provides that it shall be unlawful for  
any person to catch any fish in the fresh  
waters of this State with any seine or net,  
other than a minnow seine, not exceeding 20  
feet in length, or to drag any seine except  
such specified minnow seine or to set any  
seine in the fresh waters of this State dur-  
ing the months of March and April, etc. The  
man was fined \$25 and costs and he paid the  
same. Then immediately upon him paying this  
fine, the question arose whether or not his  
license should be cancelled. At that time  
the Game Warden cited me to Section 7 of Ar-  
ticle 934 A, as amended by the Acts of the  
First Call Session of the 43rd Legislature  
of 1933, Chapter 29, page 85, Sections 1 to  
8, wherein in Section 6 of said Act it pro-  
vides:

"Any person failing to comply with or  
violating any provision of this Act shall be

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deemed guilty of a misdemeanor and upon conviction shall be punished by a fine in a sum not less than \$10.00 nor more than \$200.00, and his license shall be automatically cancelled, and he shall not be entitled to receive another such license or permit for one year from the date of such conviction.'

"\* \* \*.

"In view of the fact that the Superior of our Local Game Warden has advised him that a violation of Article 951 would in accordance with Section 6 of Article 93<sup>4</sup> A as amended, automatically cancelled the fishing license of the fisherman. In view of this position and in view of the conflict between my opinion and the opinion of our local Game Warden's immediate superior, I thought that the proper thing to do would be to submit the question to you for your opinion upon the same, inasmuch as we all feel that we are bound by the Attorney General's opinion in the absence of a Court decision, which I do not have."

Article 951 of the Penal Code provides:

"It shall be unlawful for any person to catch any fish in the fresh waters of this State, with any seine or net other than minnow seine, not exceeding twenty feet in length, or to drag any seine, except such specified minnow seine, or to set any net, in the fresh waters of this State during the months of March and April, or to fish with any artificial bait of any kind in the fresh waters of this State during the months of March and April. Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and shall be upon conviction fined a sum of not less than twenty (\$20.00) dollars nor more than one hundred (\$100.00) dollars. This article shall not apply to any artificial lake, pond or pool, owned by any person, firm, corporation, city or town, that does not have as its source of water supply a river or creek or is not subject to overflow from a river or creek." (Emphasis ours)

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Under the provisions of Article 951, supra, the catching of any fish, or fishing in the fresh waters of this State, (except in lakes, ponds or pools owned by a person, firm, corporation, city or town, that does not have as its source of water supply a river or creek or is not subject to overflow from a river or creek) during the months of March and April, with any artificial bait, or any seine or net other than a minnow seine, not exceeding twenty feet in length, is made a misdemeanor, punishable by a fine of not less than Twenty (\$20.00) Dollars nor more than One Hundred (\$100.00) Dollars.

Article 934a of the Penal Code reads, in part:

"Sec. 2. Before any person in this State shall engage in the business of a 'Commercial Fisherman', 'Wholesale Fish Dealer', 'Retail Fish Dealer', 'Bait Dealer', 'Fish Guide'; or use or operate a shrimp trawl, net or seine, oyster dredge, boat or skiff, for the purpose of catching or taking any edible aquatic life from the waters of this State for pay, barter, sale or exchange, the proper license provided for in this Act privileging them so to do shall first be procured by such person from the Game, Fish and Oyster Commission of Texas or from one of its authorized agents.

"Sec. 3. The licenses and the fees to be paid for the same are hereby provided for in this Act and are as follows:

"1. Commercial Fishermen's License, fee Three Dollars (\$3).

"2. Wholesale Fish Dealers' License, fee for each place of business, Two Hundred Dollars (\$200).

"2-a. Wholesale Truck Dealers' Fish License, fee for each truck, One Hundred Dollars (\$100).

"3. (a) Retail Fish Dealers' License, fee Three Dollars (\$3) for each place of business in each city or town of less than seven thousand, five hundred (7,500) population.

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"(b) Retail Fish Dealers' License, fee Ten Dollars (\$10) for each place of business in each city or town of not less than seven thousand, five hundred (7,500) and not more than forty thousand (40,000) population.

"(c) Retail Fish Dealers' License, fee Fifteen Dollars (\$15) for each place of business in each city or town of more than forty thousand (40,000) population.

"(d) Retail Oyster Dealers' License, permitting the sale of oysters only, fee Five Dollars (\$5) for each place of business in each city or town of more than seven thousand, five hundred (7,500) population. The sale of any fresh or frozen edible aquatic products, other than oysters, by a retail fish dealer possessing the license named in this subsection, shall constitute a violation of this Act.

"(e) Retail Dealers' Truck License, permitting the sale of edible aquatic products from a motor vehicle to consumers only, fee Twenty-five Dollars (\$25) for each truck; provided the owner of any retail fish dealers' license issued since September 1, 1934, for a place of business in a city or town of more than five thousand (5,000) population, shall be entitled to a rebate on the same when said owner of such license shall furnish the Game, Fish and Oyster Commission a claim sworn to for said amount. When such claim is found to be correct and is approved by the Executive Secretary of said Commission, same shall be paid out of any moneys available in the State Treasury upon warrant issued by the State Comptroller.

"4. Bait Dealers' License, fee Two Dollars (\$2) for each place of business.

"5. (a) Shrimp Trawl License, for each boat operating or towing a trawl not more than ten (10) feet in width at the mouth, and not more than twenty (20) feet in length, fee Two Dollars (\$2).

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"(b) Shrimp Trawl License, for each boat operating or towing a trawl more than ten (10) feet wide at its mouth or more than twenty (20) feet in length, fee Fifteen Dollars (\$15); which said license shall permit the use of a 'try net' as auxiliary to said trawl.

"6. Seine or Net License, to be of metal, for and to be firmly attached to each one hundred (100) feet or fraction thereof, fee One Dollar (\$1) for each one hundred (100) feet of the length thereof.

"Provided, no license shall be issued for any seine or net longer than eighteen hundred (1800) feet, and also provided that after the passage of this Act no license shall be issued for any seine or net, the meshes of which are less than one and one-half ( $1\frac{1}{2}$ ) inches from knot to knot.

"7. Fish Boat License, for boats equipped with a motor of any kind or with sails, fee Three Dollars (\$3).

"8. Skiff License, for boat propelled by oars or poles, to be of metal and firmly attached to skiff, fee One Dollar.(\$1).

"9. Oyster Dredge License, fee Fifteen Dollars (\$15).

"Fish Guide License, fee Two Dollars (\$2).

"11. Place of business, as used in this Act, shall include the place where orders for aquatic products are received, or where aquatic products are sold, and if sold from a vehicle, the vehicle on which, or from which such aquatic products are sold, shall constitute a place of business. The license shall at all times be publicly displayed by the dealer in his place of business so as to be easily seen by the public and the employees of the Game, Fish and Oyster Commission. And if any aquatic products are transported for the purpose of sale in any vehicle the license required of such dealer shall be displayed inside of such vehicle.

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Provided that no person shall bring into this State any aquatic products and in this State offer same for sale without procuring the license required for such a transaction by a dealer in this State, and the fact that such aquatic products were caught in another State shall not entitle the person claiming to have caught them to sell same in this State as a commercial fisherman. (As amended Acts 1934, 43rd Leg., 3rd C.S., p. 83, ch. 40, § 1; Acts 1935, 44th Leg., p. 808, ch. 345, § 1.)

"Sec. 4. All aquatic products handled by or in the possession of any Commercial Fisherman, Wholesale Fish Dealer, or Retail Fish Dealer in this State, shall at all times and at any place, be subject to inspection by any employee of the Game, Fish and Oyster Commission of Texas; and the refusal to grant for such inspection shall constitute a violation of this Act.

"\* \* \*"

"Sec. 6. Any person failing to comply with or violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine in a sum not less than Ten Dollars (\$10.00), nor more than Two Hundred Dollars (\$200.00), and his license shall be automatically cancelled and he shall not be entitled to receive another such license or permit for one year from the date of such conviction." (Emphasis ours)

Section 7 of said Article 934a enumerates certain articles of the Penal Code, as well as certain articles of the Revised Civil Statutes of Texas which are expressly repealed by said Article 934a, and further provides that all laws or parts of laws in conflict with or contrary to this Act are hereby repealed.

Article 951, supra, is not one of the Articles expressly repealed by said Article 934a, nor is it in conflict with any of the provisions of Article 934a. Articles 951 and 934a are separate and distinct Acts of legislation, and each article provides a penalty for violations of its respective provisions.

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The penalty provided for a violation of said Article 951 is a fine of not less than Twenty (\$20.00) Dollars nor more than One Hundred (\$100.00) Dollars.

Therefore, in view of the fact that Articles 951 and 934a of the Penal Code of Texas are separate and distinct Acts, each providing a penalty for violations of its respective provisions, a person violating the provisions of said Article 951 is subject to a fine of not less than Twenty (\$20.00) Dollars nor more than One Hundred (\$100.00) Dollars, but is not subject to having his license automatically cancelled.

Trusting that the above satisfactorily disposes of your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *D. Burle Deviss*

D. Burle Deviss  
Assistant

APPROVED JUN 7, 1941

*[Signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

DBD:RS

