



**THE ATTORNEY GENERAL  
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Murrell L. Buckner, Chairman  
Game, Fish and Oyster Commission  
Austin, Texas

Dear Sir:

Opinion No. O-4307

Re: Should the persons who fish as  
described be licensed as "com-  
mercial fishermen"?

From your letter of recent date we quote the follow-  
ing:

"A number of fishermen along the Texas Coast owning their own boats, together with their crews, go into the Gulf of Mexico beyond the territorial waters of the State of Texas to catch red snapper, and, upon completing their catch return to ports along the coast and sell the fish caught.

"Sub-Section (a) of Section 1 of Article 934a defines a 'commercial fisherman' to be 'any person who takes fish or oysters or shrimp or other edible aquatic products, from the waters of this State, for pay, or for the purpose of sale, barter or exchange,' which would seem to limit the taking of aquatic products from the waters of this State, which fact is not present in the statement of facts hereinabove made, however, Section 11 of said Article 934a reads in part as follows: 'Provided that no person shall bring into this State any aquatic products and in this State offer them for sale without procuring the license required for such 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.'

"We contend that that portion of Section 11 of the Act, hereinabove quoted, would oblige those who fish as above set out to be licensed as 'commercial fishermen'. The fisherman concerned contend, however, that a part of Section 11 of

said Act hereinabove quoted and reading as follows: '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 commercial fishermen,' limits the construction contended for by the Commission to products caught in the waters of another State and not in the Gulf of Mexico beyond the territorial jurisdiction of this or any other State."

Your reference to Article 934a of the Penal Code of Texas is to Vernon's Annotated Penal Code, and the Legislation was originally enacted in 1933 by the 43rd Legislature. See Acts 1933, 1st C. S., ch. 29, p. 85. Amendments were adopted in 1934 and 1935. See Acts 1934, 3rd C. S., ch. 40, p. 83 and Acts 1935, Reg. Sess., ch. 345, p. 808. Your reference to sub-section (a) of Section 1 is correct, but that portion of the act referred to in your letter as Section 11 is really sub-section 11 of Section 3 of said Article 934a.

We think it pertinent to quote in full the two sub-sections under consideration. Section 1 defines a "commercial fisherman" as follows:

"(a) A 'Commercial Fisherman' is any person who takes fish or oysters or shrimp or other edible aquatic products from the waters of this State, for pay, or for the purpose of sale, barter or exchange."

Sub-section 11 of Section 3 reads as follows:

"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. 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.  
(Emphasis ours)

We think that portion of the statute underscored by us for emphasis is susceptible of division; that the first part contains the broad prohibitory provision that "no person shall bring into this State any aquatic products" (from any place without this State, whether such place constitutes waters of another state or waters beyond the territorial jurisdiction of any state) "and in this State offer same for sale without procuring the license required for such a transaction by a dealer in this State." Under the facts stated by you, if the fish were taken within the territorial jurisdiction of Texas, there could be no argument but that the statute would require "Commercial Fishermen's License".

The second portion of the underscored quotation would seem merely to be an example or condition; that is, that even if the fish or aquatic products were caught in another State (with the virtual certainty of having to obtain licenses from such State to legally use its waters) that nevertheless such fact should not entitle the person who caught them "to sell same in this State as a commercial fisherman."

It is therefore our opinion that the persons mentioned in your letter should obtain Commercial Fishermen's License as described in sub-section 1 of Section 3 of Article 934a, Vernon's Annotated Penal Code.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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By s/Benjamin Woodall  
Assistant

APPROVED JAN 20, 1942  
s/Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman