



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Hal F. Rachal
Assistant County Attorney
Nueces County
Corpus Christi, Texas

Dear Sir:

Opinion No. 0-6165
Re: Construction of Senate
Bill 317, Regular
Session, Forty-fifth
Legislature.

Receipt of your opinion request relative to the proper construction of Senate Bill 317, Chapter 182, p. 372, General and Special Laws of the 45th Legislature, is hereby acknowledged.

To make this opinion intelligible within itself, we must quote the facts and questions submitted which are:

"I hereby request the opinion of your department as to the proper construction of Senate Bill 317, Regular Session 45th Legislature in respect to the following matters:

"1. Should the North line of the closed area of Corpus Christi Bay and Laguna Madre be determined by projecting a line due East from a stake or marker on the shore on the northeasterly point of Flour Bluff to a point on Mustang Island, or should it be determined by running a line from said point on Flour Bluff to a stake or marker on Mustang Island, one mile north of Corpus Christi Pass, in the event both of said boundaries should not coincide?

"2. Does the term 'Corpus Christi Pass', as used in Senate Bill 317, mean only that portion of the Pass which connects the Gulf of Mexico with Laguna Madre, or does it mean the

-Pass which connects the Gulf of Mexico with Corpus Christi Bay?

"3. In the event Corpus Christi Pass means that Pass which connects the Gulf of Mexico with Corpus Christi Bay, should the stake or marker, one mile north of said Pass be placed at a point on Mustang Island one mile as near north as possible from the point where Corpus Christi Pass opens into Corpus Christi Bay? (In this connection, you will note that a point due north of such mouth of Corpus Christi Pass could not be located on Mustang Island).

"4. Is Senate Bill 317 unconstitutional in so far as it attempts to close the waters of Laguna Madre and Corpus Christi Bay because of its indefiniteness?

"5. In the event of a conviction under Senate Bill 317, should the net or seine of the defendant be confiscated and destroyed?

"6. In the event of a conviction under Senate Bill 317, should the license of the defendant be revoked?

"I make the following observations in connection with the above questions?

"If the stake or marker on Mustang Island is situated one mile north of that portion of Corpus Christi Pass, which connects the Gulf of Mexico with Laguna Madre, none of the waters of Corpus Christi Bay would be within the closed area, while Section 1 of Senate Bill 317 states in effect that part of Corpus Christi Bay is within the closed area; furthermore, a stake or marker at such point would not be situated east of the stake or marker on Flour Bluff, but on the contrary would be situated about East Southeast of such marker.

"If the stake or marker is situated at a point one mile as near North as possible from the opening of Corpus Christi Pass and the Corpus Christi Bay, then such stake or marker would be almost due east of the stake or marker on Flour Bluff, but such stake or marker could not be located due north of such mouth of the Pass, but on the contrary, would be situated about north northeast of the mouth of such Pass."

Section 1 of Senate Bill 317, supra, reads in part:

"Be it enacted by the Legislature of the State of Texas:

"Section 1. It shall be unlawful for any person to place, set, use, or have in possession or to have on board any boat, or on any vehicle, any seine, net or trawl in the waters of Corpus Christi Bay and Lagune Madre and connecting inlets or bayous, lying between a line on the north running east from a stake or marker on the shore on the northeasterly point of Flour Bluff to a stake or marker on Mustang Island, one mile north of Corpus Christi Pass, and the Nueces-Kleberg County line on the south; . . ." (Emphasis ours)

For clarity, we consider your second and third questions first.

Article 941, P. C. was in effect when Senate Bill 317 was passed and seems to be in effect at this time. We are unable to find any notation to the effect that such has been repealed. It may be considered in connection with Senate Bill 317 in so far as it defines "Corpus Christi Pass" and "Brazos Santiago Pass". Article 941 P. C. reads in part as follows:

"Corpus Christi Pass, leading from Corpus Christi Bay to the Gulf of Mexico; Brazos Santiago Pass, leading from the Lower Laguna Madre to the Gulf of Mexico. . . ."

In our opinion these acts should be construed in pari materia and that 161 follows that "Corpus Christi Pass"

mentioned in Senate Bill 317 means the pass connecting Corpus Christi Bay with the Gulf of Mexico. This inference is supported by the fact stated in your letter, that a point on Mustang Island approximately north of that pass is almost due east of Flour Bluff, which Senate Bill 317, supra, indicates to be true.

Answering your third question, it is our opinion that the stake or marker on Mustang Island one mile north of Corpus Christi Pass should be placed at a point on Mustang Island one mile as near north of said pass as possible rather than due north of said pass but not on Mustang Island.

Senate Bill 317 states that such stake or marker is to be placed on "Mustang Island" (not in the water, as your letter indicated it will be if the line is run due north). Mustang Island is a natural object. It is a basic rule of law that in running land lines, calls for course or distance yield to calls for natural objects. This rule is stated in Texas Jurisprudence, Vol. 7 p. 166 (and numerous authorities there cited), in which it is said:

"Sec. 37. In General. Calls for natural or artificial objects are less likely to have been made by mistake, and are not liable to change in the fluctuations of time like calls for courses and distances. Frequently artificial objects are set up by the surveyor which serve to mark his footsteps. Hence it is a general rule that when calls for such objects conflict with calls for course and distance, the former control in the absence of other evidence." (Emphasis ours)

In answer to your first question, it is our opinion that the north line of the closed area of Corpus Christi Bay and Laguna Madre should be determined by running a line from Flour Bluff to the marker on Mustang Island, located according to our answer to your third question, rather than being run due east from Flour Bluff (these points not being the same). Flour Bluff is a natural object and the marker is located by reference to two natural objects, i. e. Corpus Christi Pass and Mustang Island. As is stated above, in running land lines, calls

for natural objects prevail over calls for course or distance. The calls for these natural objects will prevail over the call for a course "east" of Flour Bluff contained in Senate Bill 317.

This rule is commonly applied in boundary suits; however, it has been applied by our Court of Criminal Appeals with reference to a criminal question in Johnson v. State, 244 S. W. 609.

For the above reasons, it is our opinion that by well known rules of construction, Senate Bill 317 is definite enough to be understood with certainty. Consequently, it is our opinion that its constitutionality is not jeopardized by indefiniteness.

Your fifth question asks whether, in the event of a conviction under Senate Bill 317, the net or seine of the defendant should be confiscated and destroyed.

Senate Bill 317 does not answer the question. However, as is observed in your letter, Article 952L-10, Sec. 3, P. C. may be considered. That Article reads in part:

"Sec. 3. When any officer of this State sees any seine, strike net, gill net, trammel net, or shrimp trawl in or on any of the tidal waters of this state where the use of such seine, strike net, gill net, trammel net, or shrimp trawl is prohibited from being used for the purpose of taking fish and/or shrimp, and has reason to believe and does believe that the same is being used or possessed in violation of the provisions of this Act, it shall be his duty to arrest the party using or possessing said seine, strike net, gill net, trammel net, or shrimp trawl and, without a warrant, shall seize such seine, strike net, gill net, trammel net, or shrimp trawl as evidence. It shall be the duty of such officer to deliver such seine, strike net, gill net, trammel net, or shrimp trawl to the County Judge or Justice of the Peace of the county in which it was seized, where it shall be held as evidence until after the trial. If the defendant is found guilty of possessing or using such seine, strike net, gill net, trammel net, or shrimp trawl unlawfully, the Court shall enter an order di-

recting the immediate destruction of such seine, strike net, gill net, trammel net, or shrimp trawl by the Sheriff or constable of the county where the case was tried, and the Sheriff or constable of the county shall immediately destroy such seine, strike net, gillnet, trammel net, or shrimp trawl. . ."
(Emphasis ours)

As we construe the above quoted language, the Legislature seems to provide for destruction of seines etc. in the case of a conviction under that particular article. We are unable to find any provision in Senate Bill 317 or any other statute which, in our judgment, would require or permit a destruction of the seines etc. in the event of a conviction under Senate Bill 317.

Question No. 6 asks whether, in the event of conviction under Senate Bill 317, the defendant's fishing license shall be revoked. We find no provision for such revocation. Senate Bill 317 contains none. Article 952L-10, Sec. 4, P. C. provides for such cancellation, but that provision is expressly confined to convictions under that particular article.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (s) W. T. Curry
Assistant

WTC:BT:fb
APPROVED JUL 6, 1945
(s) Grover Sellers
ATTORNEY GENERAL OF TEXAS

THIS OPINION CONSIDERED
AND APPROVED IN LIMITED
CONFERENCE