



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Ben L. King
County Attorney
Burnet County
Burnet, Texas

Dear Sir:

Opinion No. 0-6176

Re: Under the provisions of Article 948, Vernon's Annotated Penal Code, has the game warden the legal right to destroy seines found in the lakes or river in Burnet County when said seines are over twenty feet long and 1/4 inch mesh?

This will acknowledge receipt of your letter, dated August 22, 1944, in which you raise the following inquiry:

"In connection with the above Article (being Article 948, Vernon's Annotated Penal Code), will you kindly inform me whether or not a game warden has the legal right to destroy seines found in the lakes or river in this county when said seines are over twenty feet long and 1/4 inch mesh?" (Parenthesis ours)

Article 948, Vernon's Annotated Penal Code, provides, in part, as follows:

"It shall be unlawful for any person to set or drag in any of the fresh waters of this State any net or seine made of wire or other metallic substance.

"It shall be unlawful for any person to take or catch or attempt to take or catch fish in the fresh waters, rivers, creeks, lakes, bayous, lagoons, or in lakes or sloughs, subject to overflow from rivers or streams in this State, by any other means

other than by the ordinary hook and line or trotline, or by a set or drag net or seine or trammel net, the meshes of which are three or more inches square, or by a minnow seine, not more than twenty feet in length, and it shall be unlawful for any person to place in the fresh water rivers, creeks, lakes, bayous, lagoons, of this State any net or other device or trap for taking or catching fish other than as designated and permitted by this Article.

"Any person violating any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars.

"Any fish trap, net or seine or other seine or other fishing device found in the waters of this State, in violation of this article are hereby declared to be a nuisance, and it shall be the duty of the Game, Fish and Oyster Commissioner and his deputies to destroy same whenever found, and no suit shall be maintained against them therefor." (Emphasis ours)

After careful examination and consideration, it is the opinion of this department that a seine over 20 feet in length and with mesh less than 3 inches square is subject to confiscation.

In answer to your question therefore, the seines you describe may be destroyed by the game warden when found in the waters described by Article 948, supra.

Trusting this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Benjamin Woodall*
Benjamin Woodall
Assistant

E. J. Blackburn
E. J. Blackburn
SPECIAL AGENT IN CHARGE

APPROVED
OPINION
COMMITTEE
BY *BWH*
CHAIRMAN

Elton M. Hyder, Jr.