OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Gus L. Kowalski
Acting County Attorney
Kenedy County
Kingsville, Texas

Dear Sir:

Opinion No. O-6301
Re: Legislative authority to pass a Bill limiting the hunting season, as to certain game, in only a portion of a county.

We have given careful consideration to your request for our opinion, from which we quote:

"I am advised that a petition is being prepared by a number of citizens of Kenedy County, requesting the Legislature to limit the hunting as to certain game in only a portion of that county, not the entire county.

"Will you please advise me whether such an act can be passed by the Legislature and if so, what steps, if any, should be taken preliminary to its passage. Would not this have to be a special act and proper advertisement had?"

Article III, Section 56 of the Constitution of Texas prohibits the Legislature from passing any local or special law "except as otherwise provided in this Constitution", and the Section enumerates a great number of instances wherein such local or special laws are not authorized. However, the concluding paragraph of this Section of the Constitution reads as follows:

"And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing

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special laws for the preservation of the game and fish of this State in certain localities." (Emphasis ours).

Section 57 of Article III of the Constitution provides that no local or special law shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, and further requires publication for at least thirty days prior to the introduction into the Legislature of such Bill, as well as exhibition to the Legislature of the evidence of such notice having been published.

In the case of Stephensen v. Wood (Ct. Civ. App., Galveston) 35 S. W. (2d) 794, certified questions answered in 34 S. W. (2d) 246, it was specifically held that a statute prohibiting taking of fish by certain means from waters of a certain county was neither a local nor special law prohibited by the sections of the Constitution hereinabove referred to. The Court said that the underlined portion of Section 56 of Article III, supra, reserved in the Legislature the right to pass a special or local law without notice to preserve game and fish whether applicable to the entire State or merely to certain localities. The Stephensen case also specifically held that the notice contemplated in Section 57 of Article III, supra, is not required to give full force and effect to game and fish laws.

For a great number of years the several Legislatures of this State have passed many laws affecting game and fish without the notice prescribed by Section 57, supra, and we know of no instance where such an act has been stricken from our Statutes by any appellate court upon grounds such as those mentioned by you.

You are therefore advised that it is our opinion that such enactment as you mention would be valid if definitely ascertainable boundaries are fixed, without notice and advertisement as a local law.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Benjamin Woodall

Benjamin Woodall
Assistant

BW:fo

Carlton Ashley

APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN