



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable W. K. Baldrige
County Attorney
Denton County
Denton, Texas

Dear Sir:

Opinion No. O-6541
Re: Construing effect of Senate
Bill No. 93, Acts 49th Legis-
lature on Articles 951 and
952L-7, Vernon's Penal Code.

Your request for this department's opinion on the following questions reads, in part, as follows:

"I shall appreciate it very much if you will let me have your opinion on the following questions:

"1. Whether the provisions of Senate Bill No. 93, Chapter nine of the Acts of the Regular Session of the 49th Legislature repealed the provisions of Art. 951 of the Penal Code which prohibits the use of nets during the months of March and April.

"2. Whether the provisions of the said Senate Bill No. 93 will provide for the lawful use of nets with mesh not less than one inch square during all of the year instead of merely during the months of July, August, September and October as is provided in Art. 952L-7 of the Penal Code of Texas."

We have carefully considered your request and have concluded that your questions are answered by the plain provisions of Sections 1 and 5 of Senate Bill No. 93, Acts of the 49th Legislature, appearing as Article 927a in the April, 1945, Cumulative Pamphlet of Vernon's Annotated Texas Statutes Service; which Act reads respectively as follows:

"Sec. 1. There shall be no closed season or period of time when it shall be unlawful to take, catch or retsin fresh water fish by the use of ordinary hook and line or artificial lures. Other devices, the use of which is permitted by law, may

Honorable W. K. Baldridge - page 2

be used for the purpose of taking fresh water fish at any time of the year, but only in compliance with such other restrictions as are placed on their use by the laws of this state. (Emphasis ours)

"Sec. 2. It shall be unlawful for any person to take from public fresh waters and retain, or place in any container, boat, creel, live-box or on any fish-stringer any large-mouth black bass, small-mouth black bass, spotted bass, or any sub-species of large mouth black bass, small-mouth black bass, spotted bass, that is less than seven (7) inches in length.

"Sec. 3. It shall be unlawful for any person in any one day to catch and retain, or to place on or in any device or container for holding same while he is fishing, any fish that is taken from the public fresh waters of this state in excess of the following limits: large-mouth black bass, small-mouth black bass, spotted bass, or any sub-species of the same, singly or in the aggregate, fifteen (15) of which not more than ten (10) shall be of greater length than eleven (11) inches; white bass, twenty-five (25); blue catfish, channel catfish and yellow catfish, singly or in the aggregate, twenty-five (25); crappie or white perch, twenty-five (25).

"Sec. 4. Any person who violates any provisions of this Act, upon conviction shall be fined in a sum not less than Five (\$5.00) Dollars, nor more than Fifty (\$50.00) Dollars.

"Sec. 5. All laws or parts of laws, local general or special, insofar as they provide a closed season or period of time when it is unlawful to take, or catch fish or to use artificial lures, or insofar as they provide a size limit, possession limit or daily catch limit, or otherwise conflict with any provision of this Act, shall be and the same are hereby repealed; except that nothing herein contained shall

Honorable W. K. Baldrige - page 3

repeal Chapter 213, House Bill No. 654, Regular Session, 48th Legislature, or regulations made thereunder to govern the taking of fish in Lake Texoma, which is the body of water impounded by the dam at Denison, Texas." (Emphasis ours)

Articles 951 and 952L-7, as amended in 1941, read respectively as follows:

"Art. 951. March and April closed to seines and artificial bait

"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."

"Art. 952L-7. Regulating fishing in Dimmit and other counties

"Section 1. Any and all persons shall be permitted to take or catch suckers, buffalo, carp, shad, or gar during the months of July, August, September, and October in any of the fresh water of Bosque, Dimmit, Zavala, Medina, Uvalde, Dewitt, Brown, Hamilton, Coryell, Gonzales, Lamar, Bell, Collin, Grayson, Gillespie, Kendall, Menard, Kimble, Mills, Jefferson, Blanco, Llano, Mason, McCulloch, San Saba, Cooke, Denton, Orange, Mitchell, Fisher, Nolan, Chambers, Travis, Hardin, Lampasas, Fannin, Burnet, Williamson, and Parker Counties with a seine or net, the meshes of which shall not be

Honorable W. K. Baldrige - page 4

less than one inch square, and any and all persons shall be permitted to take or catch suckers, buffalo, carp, shad, or gar with wire, rope, or gig at any time of the year, provided however, that any bass, crappie or white perch, catfish, perch, bream, or trout caught by the above-mentioned methods shall be immediately released in the waters from which they are caught. As amended Acts 1941, 47th Leg., p. 398, ch. 224, § 1.

"Sec. 2. It shall be unlawful for any person to have in possession any bass, crappie or white perch, catfish, perch, bream or trout at the time that such person has in possession any suckers, buffalo, carp, shad or gar taken by methods permitted in this Act.

"Sec. 3. It shall be unlawful for any person to have in possession any bass, crappie or white perch, catfish, perch, bream or trout caught while using a seine of not less than one inch square mesh or using wire rope or gig for the purpose of taking suckers, buffalo, carp, shad or gar from any of the fresh waters of the Counties mentioned in Section 1.

"Sec. 4. Any person violating any of the provisions in sections 1, 2 and 3 of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars. Provided that this Act shall not apply to that part of Hamilton County drained by the tributaries of the Besque River, which shall be controlled by the provisions of House Bill No. 671. (Acts 1931, 42nd Leg., Spec. L., p. 194, ch. 90.)"

The Legislative intent, apparent from the language of the above emphasized sections, when construed in relation to Articles 951 and 952L-7, Vernon's Annotated Penal Code, does not appear to repeal said Articles in their entirety. Rather the intention of the Legislature seems to be to provide for an open year round season on fresh water fish. However, in all other respects local, general or special laws as they now stand amended by Section 5, continue in force and remain applicable to the particular counties.

Honorable W. K. Baldrige - page 5

It seems clear, therefore, that a seine may be used under Articles 951 and 952L-7 at any time during the year to take fresh water fish, so long as there is compliance with such other restrictions as are placed on their use by the laws of this state.

Accordingly, it is the opinion of this department that both of your questions, as stated, should be answered in the affirmative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY *Eugene Alvis*
Eugene Alvis
Assistant

BY *Bob D. Maddox*
Bob D. Maddox

BDM:sd

APPROVED MAY 9 1945
Carl J. Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

