



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 10, 1960

Honorable H. D. Dodgen
Executive Secretary
Game & Fish Commission
Austin, Texas

Opinion No. WW - 846

Re: Under the provisions of Article 4075b, V.A.C.S., as amended, is the Game and Fish Commission required to issue a Commercial Bay-Bait Shrimp Boat license to any person who, for a valid reason, was unable or failed to make application during the months of January & February?

Dear Mr. Dodgen:

You requested the opinion of this Department in a letter in which two questions were posed:

"(1) Is the Game and Fish Commission required to issue Bay-Bait Shrimp Boat licenses to persons requesting to buy said licenses prior to the months of January and February who failed to make the required remittance and renew the application during the months of January and February?

"(2) Is the Game and Fish Commission required to issue a Commercial Bay-Bait Shrimp Boat license to any person who, for valid reason, was unable to or failed to make application during the months of January and February?"

House Bill 12, Chapter 187, Acts of the 56th Legislature, Regular Session, 1959, now found in Vernon's Annotated Civil Statutes of Texas as Article 4075b, provides in part as follows:

"Sec. 5. It shall be unlawful for any Commercial Bay-Bait Shrimp Boat to be used for the purpose of taking or catching, or assisting in taking or catching, shrimp from the inside waters of Texas, without the owner thereof having first procured a license, to be known as a Commercial Bay-Bait Shrimp Boat License, from the Commission privileging such boat to be so used within the inside waters of Texas. The fee for a Commercial Bay-Bait Shrimp Boat License shall be Thirty Dollars (\$30) and such License shall be issued for a period of one (1) year and shall expire March 1st of the year following the date of issuance, and shall be secured from and issued by the Commission only during the months of January and February of each year; the License shall include the right to use, operate and tow within the inside waters of this State all shrimp trawls with which said boat is equipped, the use of which is not otherwise prohibited by Law, without the payment of any additional trawl license whatsoever, and said boat shall not be required to also have a "Commercial Fishing Boat License" as provided by Section 3 of Chapter 68 of the Acts of the Fifty-first Legislature of Texas, Regular Session, 1949, or other Statutes of this State; but the captain and each member of the crew of said boat shall be required to have a Commercial Fisherman's License issued by the Commission, and said boat shall be required to be licensed as a Commercial Gulf Shrimp Boat in order to operate within the outside waters of this State; the Commercial Bay-Bait Shrimp Boat License shall be a metal or plastic sign or emblem, of prescribed and uniform character and of a different color or design for each year, at least thirty-two (32) square inches in size, of a distinguishable character, color and design different from the emblem required of a Commercial Gulf Shrimp Boat, issued by the Commission, and shall be prominently displayed on the bow, outside of the wheelhouse, or at other designated point on the outside of said boat as specified by said Commission and on each side of said boat, evidencing the payment of such Boat License." (Emphasis added.)

In granting a license, the Legislature is merely granting a privilege and not a property right and the Legislature has the authority to deny the granting of any license whatever. Obviously, the legislative intent, as evidenced in Article 4075b, should be directed for the purposes of conserving and protecting the shrimp resources of the State from depletion and

Honorable H. D. Dodgen, Page 3. (WW - 846)

waste and to achieve fair, impartial, and uniform law enforcement.

The Legislature has enacted many laws limiting the time in which a license might be issued or a claim might be prosecuted, such as a claim for refund of tax on motor fuel provided in Article 7065A, V.A.C.S. This Department has written numerous opinions relating to the subject of Legislative authority to limit the time. Some of such opinions may be cited as: No. V-721, No. O-3850, and No. O-223. In such opinions it has been consistently held by this Department that the privileges granted and affixed by law are strictly construed, and the time limit provided therein shall be maintained, and the time for the granting of such privileges shall be strictly enforced. The Legislature has clearly stated a limitation for the issuance of such a license only during the months of January and February of each year.

In determining the intent of the Legislature, the particular meaning depends upon, and must be determined by, the context and subject matter. One of the primary and settled rules of construction is that words in common use, when contained in a statute, will be read according to their natural ordinary and popular meaning, unless the contrary intent is clearly apparent from the context, or unless there is some necessity, in a particular case, for adopting a different construction. The ordinary significance shall be applied to words, and similar provisions are found in the Penal Code and the Code of Criminal Procedure.

"When the language of a statute is unambiguous, a court is not justified in departing from the commonly accepted meaning of words found therein, for reasons of public policy, or because of the consequences of a construction that observe the conventional meaning of such words.

"In particular, words used in a penal statute should not be broadened or extended beyond their ordinary meaning. But, this, of course, does not preclude a court from taking into consideration the context and the subject matter of the statute." (39 Tex. Jur. 197,198)

Answering your two questions submitted, and basing our answers on the principles hereinabove discussed, it is the opinion of this Department that the Game and Fish Commission is without authority to issue a Bay-Bait Shrimp Boat license to any person except during the months of January and February. Due diligence upon the part of the license applicant is required by law, and one who has failed to apply in accordance with the provisions of law is not entitled to a license, and the Game and Fish Commission has no authority to make exceptions to the law.

Honorable H. D. Dodgen, Page 4. (WW - 846)

However, it is the opinion of this Department that if a person applies for a license and remits his money therefor prior to the first of January that the Commission should hold the same in suspense until after the first of January and then issue such license, the issuance of which is prohibited except during the months of January and February. The good faith of the applicant and his diligence in applying is recognized and the license should issue during the proper months.

SUMMARY

The Game and Fish Commission is not required, nor does it have the authority to, issue a Commercial Bay-Bait Shrimp Boat license to any person except during the months of January and February.

Yours very truly,

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HT:ca

APPROVED:

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