



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

October 16, 1967

Honorable Charles H. Bolton
County Attorney
Bosque County Courthouse
Meridian, Texas 76665

Opinion No. M-147

Re: Whether it is a violation
of the law to take fish
from the waters in
those counties within the
Possum Kingdom Regulatory
District with the hands
only.

Dear Mr. Bolton:

You have requested our opinion as to the legality of a practice whereby fish are taken from the waters within the counties situated in the Possum Kingdom Regulatory District by use of the hands alone.

Article 927, Vernon's Penal Code, sets forth the general means and manner by which fish may be lawfully taken from fresh waters in this State.

This office recently held in Opinion No. M-10 (January 19, 1967) that Article 927 does not prohibit the taking of fish using only the hands to do so; however, that opinion was specifically limited to the construction of Article 927 alone, and did not consider local and special laws which govern fishing in specified counties or areas.

Article 978j-1, Vernon's Penal Code (effective September 1, 1967), codifies all previous Acts of the Legislature of a similar nature into a single "Uniform Wildlife Regulatory Act" concerning the counties and areas designated therein and repeals all General and Special laws in conflict therewith. Acts 60th Leg., R.S., 1967, ch. 730, p. 1959.

Section 2 of Article 978j-1 grants wildlife regulatory authority in said counties to The Parks and Wildlife Commission and provides, in part, that:

"It shall also, by proclamation, rule or regulation, from time to time, provide the means and the method and the place and the manner in which such wildlife resources may be lawfully taken, . . ."
(Emphasis added.)

The right of the Legislature thus to confer upon or delegate to executive or administrative bodies, in the exercising of the State's police power, the authority to prescribe rules and regulations, which shall have the force of laws, has been upheld. Williams v. State, 176 S.W.2d 177 (Tex.Crim. 1943).

On September 27, 1967, the Parks and Wildlife Commission adopted Possum Kingdom Hunting, Fishing and Trapping Proclamation No. G-21, 1967-68.

Pertinent sections of Proclamation No. G-21 read as follows:

"1.01 Application.

This proclamation applies to all the game birds, game animals, fur-bearing animals of all kinds, alligators, fish and other aquatic life and marine animals of all kinds in the Possum Kingdom Regulatory District which for these purposes shall consist of the following counties: Archer, Baylor, Bosque, Brown, Callahan, Clay, Coleman, Comanche, Cooke, Dallas, Denton, Eastland, Ellis, Erath, Hamilton, Hill, Hood, Jack, Johnson, Mills, Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Tarrant, Throckmorton, Wichita, Wilbarger, Wise, and Young, except that no part of this proclamation shall apply to fishing in Lake Texoma which is regulated by the Lake Texoma Fishing Proclamation.

"1.02 Authority.

This proclamation is issued pursuant to Article 978j-1, V.A.P.C.

"1.03 Effective Date.

This proclamation shall be effective on and after the fifteenth (15th) day after adoption by the Parks and Wildlife Commission until amended, revoked, or modified.

"1.08 Rough Fish Contracts and Management Practices.

Taking or attempting to take any fish or game in the above named counties by any means other than as hereinafter set forth shall be unlawful, except under the fish management contracts with the Parks and Wildlife Department for removal of rough fish, as provided in Article 4050c, V.C.S. However, none of this proclamation shall apply to the Parks and Wildlife Department of Texas, its agents or employees when in the course, acts, or procedures of conservation, removal of rough fish or other practices deemed by said Department to be in the best interest of game and fish culture and the preservation of the sports of hunting and fishing.

"7.04 Means and Methods.

It is unlawful to take or attempt to take any fish by any means or method except as specifically allowed in this section." (Emphasis added.)

This is followed by an enumeration of the allowable means or methods of taking fish by describing the number of hooks, types of equipment, seines or traps that may be used.

Taking fish by use of the hands is not specifically enumerated by Proclamation No. G-21 as an allowable means or method to take or attempt to take fish.

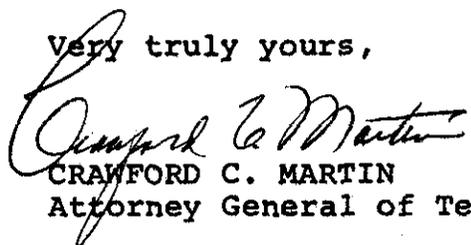
Therefore, pursuant to the rule making power vested in the Parks and Wildlife Commission by Section 2 of Article 978j-1, and the promulgation of Section 7.04 of Proclamation No. G-21, 1967-68 as amended September, 1967, such taking of fish by this means or method in the counties within the Possum Kingdom Regulatory District is unlawful.

S U M M A R Y

It is a violation of the law to take fish from the waters in those counties within the Possum Kingdom Regulatory District by use of the hands alone.

Honorable Charles H. Bolton, Page 4 (M-147)

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Jo Betsy Lewallen and
Monroe Clayton, Assistant Attorneys
General

APPROVED:

OPINION COMMITTEE:

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STAFF LEGAL ASSISTANT

A. J. CARUBBI, JR.