



**OFFICE OF  
THE ATTORNEY GENERAL  
AUSTIN, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

Nov. 15, 1947

Hon. James C. Martin  
County Attorney  
Nueces County  
Corpus Christi, Texas

Opinion No. V-431

Re: Constitutionality of H.B.  
380, Acts 50th Legisla-  
ture, R.S., 1947, per-  
taining to taking and  
sale of shrimp.

Dear Sir:

You request a ruling relative to the constitutionality of House Bill 380, being Chapter 187, Acts of the 50th Legislature, 1947, Regular Session, page 149, amending V. P. C., Art. 952 L-11, pertaining to the taking and sale of shrimp. You state:

"It is contended by some parties that House Bill No. 380 is unconstitutional in view of the provisions of said law which permits to be legally used in Galveston County, Texas, a board not more than 20" wide, and not more than 60" long, and in other counties of the State, a board not more than 12" wide and not more than 18" long. Those contending the law to be unconstitutional maintain it violates the Texas Constitution in that it is discriminatory, and is a local or special law."

The particular paragraph which you refer to is found in Vernon's Annotated Penal Code, Article 952 L-11, as amended, and reads as follows:

"Sec. 1. . . . .

"It shall be unlawful for any person to take or assist in the taking of shrimp from the inland waters of this State by the use and operation of a bait trawl towed by a power boat, which said bait trawl shall be more than ten (10) feet at the mouth, as measured along the webbing attached to the cork line, or twenty-five (25) feet in length, or by the use and employment of

doors or other boards to spread and open said bait trawl which are of greater size or dimension than twelve (12) by eighteen (18) inches, or to tow or assist in the towing of more than one such bait net or trawl from a power boat, or to tow other boats engaged in taking bait shrimp; and it shall be unlawful for any person operating a bait trawl to have on board any boat any amount of bait shrimp during the closed season in inland waters as above provided in excess of one hundred and fifty (150) pounds of shrimp in their natural state with heads attached. Provided that during such closed season in Galveston County it shall be lawful to take shrimp for bait by the use and employment of doors or boards of not greater dimension than twenty (20) by sixty (60) inches and to possess not more than two hundred and fifty (250) pounds of shrimp with heads attached. . . ."

The State is the owner of the fish, shrimp and other products of the tidal waters of the Gulf of Mexico within the jurisdiction of this State. Article 4026, V. C. S.; Raymond v. Kibbe, 95 S.W. 727, 729, 730; Stephenson v. Wood, 34 S. W. (2d) 246, 119 Tex. 964; Tuttle v. Wood, 35 S. W. (2d) 1061, writ refused; McCready v. Virginia, 94 U. S. 391, 24 L. Ed. 248; Geer v. Connecticut, 161 U. S. 519.

Article III, Section 56 of the Texas Constitution, after prohibiting the Legislature from passing "any local or special law" in certain enumerated instances, contains the following provision:

" . . . provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities."

In Stephensen v. Wood, Civil Appeals, 35 S. W. (2d) 794, the Galveston Court in construing this provision of the statute said:

"It occurs to us that by the paragraph last quoted the framers of the Constitution meant to declare that nothing in the Constitution should prohibit the Legislature from

passing laws, 'special or local,' for the preservation of the game and fish of this state, whether made to apply to the whole state or to certain localities without notice required in the passage of laws relative to the subjects mentioned in sections 56 and 57 of article 3 of the Constitution."

It is immaterial that a game law applies to some counties and not to others or that different laws apply to different counties. The counties, as such, have no right to complain that the game laws applicable to it are different from the game laws applicable to certain other counties. For instance, there are very few counties that have the same squirrel laws. Whatever the law is in a particular county, it applies equally and without discrimination to all persons in the county. The State owns the fish and game, which are *ferae naturae*, and through its Legislature it may prohibit their taking altogether, or place such restrictions on their taking, as it may see fit, either as to the place or the means of taking, or both. See authorities cited above.

In *Tuttle v. Wood*, San Antonio Court of Civil Appeals, 1930, 35 S. W. (2d) 1061, the court said:

" . . . It must be conceded that the state has the inherent power, to be exercised through the Legislature, to regulate the taking of fish and shrimp from its public waters, and to prohibit from time to time such taking, in order to conserve those natural resources for the ultimate benefit of all the people. So long as that power is reasonably exercised by the legislative authority, no other branch of the government may interfere therewith. Ordinarily, the necessity or reasonableness of regulation or prohibition in specific cases, for the time being, are left to the discretion of the Legislature, whose determination thereof, in the exercise of a sound discretion, is conclusive upon the courts. . . ."

The Legislature of Texas is authorized to enact special laws for the preservation of game and fish without notice required for the passage of "special or local laws", and it is immaterial that such laws apply to certain localities and not to others.

SUMMARY

House Bill No. 380 (Acts 50th Leg. 1947, Ch. 187, p. 149) amending Art. 952, L-11, V. P. C., pertaining to the taking and sale of shrimp, and providing that there may be used in Galveston County, Texas in a bait trawl for the taking of shrimp, a board not more than 20" wide and not more than 60" long, and in other counties of the State a board not more than 12" wide nor more than 18" long, is constitutional.

Yours very truly

ATTORNEY GENERAL OF TEXAS

*David Wuntch*

By

David Wuntch  
Assistant

APPROVED

*Price Daniel*

ATTORNEY GENERAL

DW:kw:jrb