



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable F. L. Massie  
County Auditor  
Wilbarger County  
Vernon, Texas

Dear Sir:

Opinion No. 0-1907  
Re: Interpretation of Article  
917, Penal Code, relative  
to State game preserves

Thank you for your letter of January 29, 1940, requesting the opinion of this department interpreting Article 917, Vernon's Annotated Penal Code. We quote from your letter:

"The following question has arisen under the above Act wherein it states:

"The aggregate acreage of all preserves which may be designated in any one county shall never exceed ten per cent of the total acreage of such county."

"What would be the status of an application filed covering 72,000 acres to be placed in a state game preserve in a county whose aggregate acreage was 650,000 acres?

"Would the application have to be refiled for 65,000 before it would be legally a state game preserve, or could the applicant exclude certain sections totaling 7,000 acres and reduce his application to 65,000, and comply with the Act? If these changes were made, when would it actually become a state game preserve?"

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Article 917 of the Penal Code reads as follows:

"Any person, firm or corporation owning and in possession of lands in the State of Texas, may transfer by an instrument of writing, duly acknowledged before an officer, authorized under the laws of this State to take acknowledgments, to the State of Texas the right to preserve, protect and introduce for propagation purposes any of the game birds or game animals mentioned in this chapter on the lands mentioned therein, for a period of not less than ten years. Such instrument of writing shall be filed in the office of the Game, Fish and Oyster Commissioner, whereupon the Game, Fish and Oyster Commissioner may at his discretion declare the lands described in said instrument a State Game Preserve, and thereafter for the period named therein shall for all the purposes relating to the preservation, protection and propagation of game birds and game animals be under the control of the Game, Fish and Oyster Commissioner. The aggregate acreage of all preserves which may be designated in any one county shall never exceed ten per cent of the total acreage of such county. Such preserves shall be numbered in the order of the filing of the instrument therefor. The Game, Fish and Oyster Commissioner shall cause notices to be prepared containing the words "State Game Preserve," "Trespassing Prohibited," and cause such notices to be posted at each gate or entrance thereto. All State game preserves established under the provisions of this chapter shall for all purposes of preservation, protection and propagation of game birds and game animals thereon be under the control and management of the Game, Fish and Oyster Commissioner, and he and his deputies may at all times enter in and upon such preserves in the performance of their duties.

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"It shall be unlawful for any person to hunt, pursue, shoot at, kill, take, destroy, or in any manner molest any of the game birds or game animals within the exterior boundaries of any game preserve, and any person who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty (\$50.00) dollars nor more than two hundred (\$200.00) dollars."  
(Underscoring ours)

We also call your attention to Section 1 of Article 978f, Vernon's Annotated Penal Code, which reads as follows:

"The office of Game, Fish and Oyster Commissioner of the State of Texas is hereby abolished. There is hereby created the Game, Fish and Oyster Commission which shall have the authority, powers, duties and functions heretofore vested in the Game, Fish and Oyster Commissioner, except where in conflict with this Act."

Article 917, supra, makes the granting or denial of an application to have lands declared a State game preserve entirely a matter for the administrative discretion of the Game, Fish and Oyster Commission, and no vested right accrues upon the filing of the instrument described in such article. Moreover, because of its peculiar training and experience, the Commission is better equipped to pass upon the question of when a game preserve is necessary in a particular county, and the circumstances upon which land shall be declared a State game preserve.

Consequently, we respectfully suggest that the matter be referred to the Game, Fish and Oyster Com-

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mission, and it is the opinion of this department that the question of whether or not an amended or new original application should be filed (so as to comply with Article 917) is entirely a matter within the administrative discretion of that department.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Walter R. Koch*  
Walter R. Koch  
Assistant

By *James D. Smullen*  
James D. Smullen

JDS:LW

APPROVED FEB 2, 1940

*George Mann*  
ATTORNEY GENERAL OF TEXAS

