



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable A. C. Winborn  
Criminal District Attorney  
Harris County  
Houston 2, Texas

Dear Sir:

Opinion No. 0-6525  
Re: Effect of House Bill No. 211,  
Acts of the Forty-ninth Legis-  
lature, on nonresident commer-  
cial fishermen's licenses, and  
nonresident commercial fishing  
boat licenses.

Your request for an opinion of this department  
reads in part, as follows:

"On April 2nd a bill was signed by the Govern-  
or amending House Bill No. 683, Chapter 11, Acts  
of the 46th Legislature, defining a nonresident  
commercial fisherman and a nonresident commercial  
fishing boat and providing for licenses for same.  
The State Game Department has issued licenses to  
nonresident commercial fishermen and to nonresident  
boats, which licenses expire on August 31st of  
this year. I would like to have your opinion as  
to whether or not this new Act cancels all licenses  
held by nonresidents and issued to nonresident  
boats."

In answering the above inquiry as it pertains to  
the nonresident commercial fisherman's license, we invite  
your attention to Section 1 of House Bill 683, Chapter 11,  
Acts of the Forty-sixth Legislature, appearing as Article  
934b-1 in Vernon's Annotated Penal Code. Said section read-  
ing as follows:

"Sec. 1. A 'nonresident commercial fisher-  
man' for the purpose of this Act is hereby defined  
as follows:

"Any person who is a citizen of any other  
state, or any person who has not continually been

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a bona fide resident of this state for a period of time more than twelve (12) months, and who takes, catches, or assists in taking or catching, fish or shrimp or oysters or any other edible aquatic life from the tidal salt waters of this State for pay or for the purpose of sale, barter, or exchange."

Section 1 of House Bill No. 211, Acts of the Forty-ninth Legislature, in amending the above quoted Article reads as follows:

"Section 1. A 'Non resident Commercial Fisherman' for the purpose of this Act is hereby defined as follows:

"Any person who is a citizen of any state, or any person who has not continually been a bona fide inhabitant of this state for a period of time more than twelve (12) months, the word person shall include partnerships, associations and corporations who have not continually had a bona fide place of business in this state for a period of time more than twelve (12) months, and who takes, assists in taking or catching, fish or shrimp or oysters, or any other edible aquatic life from the tidal salt waters of this state for pay or for the purpose of sale, barter or exchange." (Emphasis added)

A comparison of the above sections discloses that the amending legislation functions only to broaden the scope of those persons required to hold a nonresident commercial fisherman's license. This view is supported in that the Two Hundred Dollar (\$200.00) fee for such licenses remains unchanged.

Therefore, it is our opinion that House Bill No. 211, Acts of the Forty-ninth Legislature does not cancel said licenses and those fishermen operating thereunder may continue until August 31, 1945, the normal date of expiration.

In determining your inquiry as to whether Section 4 of House Bill No. 211, Acts of the Forty-ninth Legislature, cancels all prior licenses issued on nonresident commercial fishermen's boats, we call to your attention that prior to

passage of the above Act, the law contained no specific provision pertaining to the licensing of nonresident commercial fishing boats. Resident and nonresident commercial fishermen both receiving their boat licenses by virtue of Article 954a, Section 3, Subsection 7, V.A.P.C., said subsection reading as follows:

"Fish Boat License, for boats equipped with a motor of any kind or with sails, fee Three Dollars (\$3)."

Sections 2 and 4 of House Bill No. 211, Acts of the Forty-ninth Legislature, have made specific provisions for the licensing of nonresident commercial fishing boats; said sections reading as follows:

"Sec. 2. A 'Nonresident Commercial Fishing Boat' for the purposes of this Act is hereby defined as follows:

"Any boat or vessel, which is registered in any other State, or which has not continually been registered in this State for a period of time more than twelve (12) months, or which is not owned by any person, partnership, association of persons or corporation which has had a bona fide place of business in this State for a period of time more than twelve (12) months, and which is used for the purpose of taking, or assisting in taking or catching, fish, shrimp, oysters or any other edible aquatic life from the tidal salt waters of this State for pay or for the purpose of sale, barter or exchange."

"Sec. 4. License for Nonresident Commercial Fishing Boat required; amount of fee. Before any 'Nonresident Commercial Fishing Boat' shall be used for the purpose of taking or assisting in taking or catching, fish, shrimp, oysters or any other edible aquatic life from the tidal salt waters of this State for pay or for the purpose of sale, barter or exchange, a license to be known as 'Nonresident Commercial Fishing Boat License', shall first be procured from the Game, Fish and Oyster Commission of Texas, or one of its authorized agents, privileging them so to do.

"The fee for a Nonresident Commercial Fishing Boat License shall be Two Thousand Five Hundred (\$2500.00) Dollars."

For a consideration of the constitutionality of the above sections of House Bill No. 211, Acts of the Forty-ninth Legislature, we quote from the following authorities:

Volume 11, Section 34, Ruling Case Law, page 1046, reading, in part, as follows:

"By reason of the fact that title to fish and game within the boundaries of a state is vested in the people of the state in their sovereign capacity, the legislature has greater power over such property than it has over almost any other commodity, and in order to preserve such property to the people of the state, the lawmaking assembly may enact that only citizens of the state shall take fish from the waters within its jurisdiction

...

". . . Likewise, the state, having power to exclude nonresidents from fishing in the state, may grant them the privilege upon conditions different from those it imposes on its residents as, for example requiring a larger boat license fee." (Emphasis added)

On this point see McCready v. Va., 94 U. S. Reports 395; Greer v. Conn., 161 U. S. Reports 519; People v. Setunsky, 126 N. W. 844, 161 Mich. 624.

Bearing in mind that the state through its sovereign powers may constitutionally exclude nonresidents altogether from its territorial waters, we invite your attention to Volume 83, Section 21 of American Jurisprudence, page 342, reading, in part, as follows:

"Sec. 21. The constitutional inhibition as to impairment of the obligation of contracts does not extend to licenses. A license itself is not a contract between the sovereignty and the licensee, and is not property in any constitutional sense. It does not confer a vested, permanent or absolute right, but only a personal privilege to be exercised under existing restrictions and such as may

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thereafter be reasonably imposed. Free latitude is reserved by the governmental authority to impose new or additional burdens on the licensee or to revoke the license. Moreover, this is the general rule notwithstanding the expenditure of money by a licensee in reliance upon the license. . . ."  
(Emphasis added)

.On this point see State ex rel Ohsman & Sons Co., Inc., v. Starkweather, 7 N. W. 2d 747; Olson et al. v. State Conservation Commission, 293 N. W. 262, 255 Wis. 473.

Thus it is seen that the state, after choosing to grant licenses to nonresidents, may impose new or additional burdens upon these licensees, or may revoke said licenses altogether, without abridging the obligations of a contract.

This being true, Article 4, Section 2, of the Federal Constitution, entitled the "Privileges and Immunities" clause, is the remaining factor to be met in our determination of the effect of House Bill No. 211, Acts of the Forty-ninth Legislature, as pertains to nonresident commercial fishermen's boat licenses. In this connection, we direct your attention to State v. Ashman, 135 S. W. 325; 123 Tenn. 654, a case which contains a good statement of the majority rule in the United States. Said statement reads as follows:

"The rights, privileges, and immunities which are secured by this clause to the inhabitants of the several states do not include any rights in the property of the several states held in trust for their own inhabitants, and laws which prohibit them in whole or in part from participating in the benefits of that property do not deprive them of any constitutional rights. The majority of the states have enacted laws prohibiting or limiting the rights of nonresidents to take game or fish within their respective boundaries, and, upon the principles above stated, this legislation has been invariably upheld by all the courts."

In the light of the above cited authorities, it is the opinion of this department that Section 4 of House Bill No. 211, Acts of the Forty-ninth Legislature, cancels all

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existing licenses issued on nonresident commercial fishing boats; the bill having become effective as of April 2, 1945, by passing with the required number of votes in each house of the Legislature and signed by the Governor.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Benjamin Woodall*  
Benjamin Woodall  
Assistant

APPROVED JUN 14 1945  
*Tom Hillis*  
SECRETARY GENERAL OF TEXAS

By *Bob D. Maddox*  
Bob D. Maddox

BDM:mp

APPROVED  
OPINION  
COMMITTEE  
BY *BLW*  
CHAIRMAN