



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

December 23, 1947

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

Opinion No. V-463

Re: The inspection tax liability of shrimp imported to Brownsville from a Mexican port on a boat temporarily registered under the Panamanian Flag but actually having Brownsville as its home port.

Dear Sir:

Your letter of November 24, 1947, is as follows:

"This Department is uncertain as to the application of House Bill 379, Section 10, Paragraph B, as it applies to a boat owned and operated under the following conditions:

"The boat in question, The Lulu, is owned by Robert P. Miller, of McAllen, Hidalgo County, Texas, a native Texan. Mr. Miller has lived in Hidalgo County for many years. Mr. Miller and his brother own two food processing plants, one at San Carlos, in Hidalgo County, and one in Mission, Hidalgo County, Texas. Mr. Miller purchased this boat from the Maritime Commission of the United States, and has a temporary registration under the Panamanian Flag, inasmuch as the vessel has been used by Miller in South American fruit trade. The boat has never been used in any type of fishing operations. This boat, while its temporary home registered port under the admiralty laws is the City of Panama, actually operates out of Brownsville, Cameron County,

Texas, as its home port. This boat has a United States customs export number assigned to it. Mr. Miller desires to use this cargo boat for the purpose of exporting shrimp from Mexico. These shrimp will not be taken from boats at sea, but will be purchased at a Mexican port, packaged and exported under a Mexican export license and bill of lading, and brought over water to Brownsville and there transported to their food processing plants for handling, and after the shrimp have been processed, will be sold throughout Texas and the United States generally.

"We shall appreciate your opinion on the following questions:

"1. Is inspection tax due on a cargo of shrimp or other edible marine products when brought into this State aboard the boat above described, when said products were brought in from outside of the jurisdictional limits of this State?

"2. May a boat as above described be licensed with a fish boat license and thereby be eligible for the above described operations without payment of inspection tax?"

The pertinent provisions of House Bill 379, being Chapter 59, of the Acts of the General Laws of the 50th Legislature, Regular Session, p. 86, is an amendment of Vernon's Annotated Penal Code, Art. 934b-1, and is as follows:

"Sec. 2. That Section 10 of Article 934b-1, Penal Code of Texas, the same being Acts, 1945, Forty-ninth Legislature, page 78, Chapter 55, Section 1, be amended so as to be and hereafter read as follows:

"Section 10. Whereas, the taking of fish and marine life outside of the territorial waters of the State of Texas affects and endangers the supply within the State; and whereas the State of Texas has no adequate means of supervision and inspection of the sanitary conditions, and of sanitary control and inspection of the personnel of

unlicensed boats or vessels operating outside of the territorial waters of this State and engaged in commercial fishing; and whereas such boats and vessels may discharge their cargo and sell their marine products in Texas ports without license or supervision; and whereas such practice endangers the life and health of the citizens of the State of Texas; and the supply of game and fish within the State; therefore:

"(a). It shall be unlawful for any boat or vessel engaged in commercial fishing, which said boat or vessel is not licensed under Article 934 of the Penal Code of Texas as amended, to discharge or unload any commercial cargo of fish; shrimp, oysters or other marine products, or to sell or process the same within the State of Texas unless and until the same has been duly inspected at a port of entry as hereinafter provided and found to be in a sanitary condition under the rules and regulations as hereinafter provided and shall have paid or secured the payment of the inspection fee or tax as hereinafter provided for the inspection thereof.

"(b). There is hereby levied an inspection fee or tax of Ten Dollars (\$10) for each one hundred (100) pounds or fraction thereof of any cargo of fish, shrimp, oysters or other marine products sought to be discharged or unloaded from any unlicensed commercial fishing boat or vessel within the territorial limits of Texas. And the same shall be paid or secured to be paid by a cash or security bond made payable to the Game, Fish and Oyster Commission of Texas, as a prerequisite for inspection and the unloading and discharge thereof.

"(c). The Game, Fish and Oyster Commission is hereby authorized to employ such necessary personnel and patrol boats in order to enforce the provisions of this Act and the jurisdiction of the State of Texas, within territorial limits as provided by law.

"(d). The Game, Fish and Oyster Department shall provide a suitable number of ports

of entry for such unlicensed commercial fishing vessel, and no such cargo as above provided may be unloaded or discharged except in such ports of entry, and then only after notice and application to the official and agent of the Department at such port of entry and after inspection. And the Department is hereby authorized, acting in conjunction with the State Health Department of Texas to provide for rules and regulations governing such inspection including such bacteriological, chemical, and toxic tests as may be required, and for blood tests and personal examinations of the personnel and members of the crew of such unlicensed boats or vessels; and based upon such rules and regulations to determine whether or not the unloading, discharge, processing or sale of such cargo shall be detrimental to the health and welfare of the citizens of the State of Texas; and no suit shall ever be filed or judgment granted against the Game, Fish and Oyster Commission, its officials or agents by reason of any delay resulting in the damage to any cargo or by reason of the failure to grant any permit for the unloading, discharge, processing or sale of such cargo."

Article 934, Penal Code of 1925, mentioned in subsection (a) of Section 10 was superseded and repealed in 1933 by Acts 43rd Legislature, 1st C. S., p. 85, which Act, as subsequently amended, is now Article 934a, V.P.C. The provisions thereof with which we are here concerned respectively read:

"Section 1. The following words, terms and phrases used in this Act are hereby defined as follows:

"(a) A 'commercial fisherman' is any person who takes fish or oysters or shrimp or other edible aquatic products from the waters of this State, for pay, or for the purpose of sale, barter or exchange.

"Section 2. Before any person in this State shall engage in the business of a 'commercial fisherman' . . . or use or operate a . . . boat . . . for the purpose of catching or taking any edible aquatic life from the waters of this state for pay, barter, sale or

exchange, the proper license provided for in this Act privileging them so to do shall first be procured by such person from the Game, Fish and Oyster Commission of Texas or from one of its authorized agents."

"Section 3. The license and the fees to be paid for same are hereby provided for in this Act and are as follows:

"(1) Commercial Fishermen's License, fee Three Dollars (\$3.00).

". . .

"(7). Fish Boat License, for boats equipped with a motor of any kind or with sails, fee Three Dollars (\$3.00)."

Article 934b-1, V.P.C., was enacted in 1939 (Acts 46th Leg., H. B. 683, p. 238), amended in 1945 (Acts 49th Leg., Ch. 55, p. 78 and again amended in 1947 (Acts 50th Leg., H. B. 379, Ch. 59, p. 86). The first two sections thereof respectively read:

"Section 1. 'A non-resident commercial fisherman' for the purposes 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 a bona fide inhabitant of this State for a period of time more than twelve (12) months; the word 'person' shall include partnership, 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."

"Section 2. A 'non-resident 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 assist 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."

Section 3 requires a non-resident commercial fisherman to obtain a license, the fee for which is \$200.00 from the Game, Fish and Oyster Commission, or one of its authorized agents, before he may legally take or assist in taking any fish, shrimp or oysters or any other edible aquatic life from the tidal salt waters of this State.

Section 4 likewise requires a non-resident commercial fishing boat to obtain a license to be known as "Non-resident Commercial Fishing Boat License," the fee for which is \$2500.00 from the Game, Fish and Oyster Commission or one of its authorized agents before such boat may legally be used for the purpose of taking or assisting in taking any fish, shrimp, oysters or any other edible aquatic life from the tidal waters of this State.

We think it is apparent that a boat license issued under the provisions of Article 934a may properly be termed "a residential commercial fishing boat license." Sec. 4a, Art. 934b-1, V.P.C. A boat license issued under the provisions of Sections 2 and 4 of Article 934b-1 is a "Non-resident Commercial Fishing Boat License." A boat or vessel licensed under either of these Articles is granted the privilege 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 boat or vessel so licensed is "engaged in commercial fishing" when used for the purpose or business for which it was licensed, and is a "commercial fishing boat or vessel", within the meaning of these statutes.

We construe Subsection (a), Section 10 of Article 934b-1, to make it unlawful for any boat or vessel "engaged in commercial fishing", which is not licensed

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under the laws of this State as a residential commercial fishing boat, to discharge or unload any commercial cargo of fish, shrimp, oysters or other marine products, or to sell or process the same within this State until the same has been inspected at a port of entry; found to be in a sanitary condition, and the inspection fee or tax, provided for in Subsection (b), paid or secured as therein provided.

Subsection (b) of Section 10 levies an inspection fee or tax of Ten Dollars (\$10) for each one hundred (100) pounds or fraction thereof of any cargo of fish, shrimp, oysters or other marine products sought to be discharged or unloaded from any unlicensed commercial fishing boat or vessel within the territorial limits of Texas.

However, under the facts submitted by you, The Lulu is not "engaged in commercial fishing" and is not a "commercial fishing boat or vessel", within the meaning of Articles 934a and 934b-1, Vernon's Penal Code. Therefore, Section 10 of Article 934b-1, Vernon's Penal Code, which provides for an inspection tax, does not apply.

#### SUMMARY

A boat registered in the Republic of Panama and used exclusively as a cargo boat for exporting shrimp from Mexico to Brownsville, Texas is not "a commercial fishing boat" and is not "engaged in commercial fishing" within the meaning of those terms as used in Article 934a and Article 934b-1, V. P. C., and is not subject to the payment of the inspection fee or tax imposed by Section 10 of Article 934b-1, V. P. C., on cargoes of boats or vessels engaged in commercial fishing, when the shrimp are "purchased at a Mexican Port, and are packaged and exported under a Mexican Export License and Bill of Lading."

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED:

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By

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