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OF TEXAS**

AUSTIN 11, TEXAS

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June 14, 1951.

Hon. Ramie H. Griffin
Criminal District Attorney
Jefferson County
Beaumont, Texas

Opinion No. V-1191

Re: Legality of fishing with
seines or nets within
one mile of the jetty
at Sabine Pass, Texas.

Dear Sir:

Your recent request for an opinion asks whether Article 941, V.P.C., prohibiting the use of certain large seines, nets, and other devices for catching fish in or on Sabine Pass or the waters within one mile thereof, applies to the waters within one mile from any point on the Sabine Jetty. Your question arises from the fact that application of Article 941 to the jetties at San Luis Pass, commonly known as Galveston Pass, has been questioned, and, the conditions there being similar to those at Sabine Pass, you desire a clarification as to application of the statutes.

Specifically you ask two questions, which are:

(1) Does House Bill 952, Special Laws, 46th Leg., R.S. 1939, ch. 84, p. 839, modify Article 941, V.P.C., and govern the situation at Sabine Pass?

(2) If not, is the prohibited area under Article 941, V.P.C., to be measured from any point on Sabine Jetty?

Each question depends on certain factual matter which has been furnished by you and by personnel of the Game, Fish and Oyster Commission, the correctness of which we shall assume for purposes of this opinion.

Article 941, V.P.C., provides:

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"It shall be unlawful for any person to place, set, use or drag any seine, net or other device for catching fish and shrimp other than the ordinary pole and line, casting rod and reel, artificial bait, trot line, set line, or cast net or minnow seine of not more than twenty feet in length for catching bait, or have in his possession any seine, net or trawl without a permit issued by the Game, Fish and Oyster Commissioners [now Commission] or by his authorized deputy . . . within or on the waters of . . . Sabine Pass, leading from Sabine Lake to the Gulf of Mexico; San Luis Pass, leading from Galveston West Bay to the Gulf of Mexico; . . . or in or on the waters within one mile of the passes herein mentioned, connecting the bays and tidal waters of this State with the Gulf of Mexico or in or on or within a mile of any other such passes, or within the waters of any pass, stream or canal leading from one body of Texas bay or coastal waters into another body of such waters; . . ." (Emphasis added throughout.)

House Bill 952, Special Laws, 46th Leg., R.S. 1939, ch. 84, p. 839, provides:

"Section 1. It shall be unlawful for any person to use, operate, sail, anchor, tie, or moor to the bank any boat, sailboat, motorboat, skiff, barge, raft, or other floating device, or to place any post, piling, obstruction, wire, rope, cable, net or trap, in or upon the waters of any natural or artificial pass which is now or may be hereafter opened, reopened, dredged, excavated, constructed, and maintained by the Game, Fish and Oyster Commission of the State of Texas as a fish pass, between the Gulf of Mexico and any inland bay, within a distance of two thousand, eight hundred (2,800) feet inside of such pass, measured from the mouth of said pass where it empties into or opens upon the Gulf of Mexico."

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As to your first question, obviously the application of House Bill 952 to any situation depends on whether the Game, Fish and Oyster Commission has functioned or is functioning in improving the pass concerned. You have advised that the Commission does not so function at Sabine Pass or Sabine Jetty. Such being true, House Bill 952 has no application.

The answer to your second question depends on the extent to which Sabine Jetty and the waters adjacent thereto constitute a part of Sabine Pass and the correct determination of the points from which to measure the prohibited area.

As we understand the factual situation, the Sabine Jetty was formed by the erection of two parallel walls or breakwaters extending some three miles out into the Gulf from each side of the natural mouth of Sabine Pass. It, in effect, extends the pass the length of the jetty into the Gulf.

We are further advised that fish tend to approach the pass for entrance therein from the sides of the jetty, and, upon meeting the obstruction, tend to turn and congregate in one or more spots on the outside of the jetty where they become peculiarly vulnerable to netting and seining at the location of such "traps."

If "Sabine Pass," referred to in Article 941, does not include the artificially extended channel, the jetty may be ignored in determining the prohibited area. If it includes the extension, the question arises as to what area in addition to the new channel is included in the prohibition.

These questions may be determined by reference to Gibson v. Sterrett, 144 S.W. 1189 (Tex. Civ. App. 1912), and Gavina v. State, 65 Tex. Crim. 572, 145 S.W. 594 (1912). In the Gibson case it was urged that a "pass," as used in Article 941, was a restricted area lying immediately between the islands forming the strait entering Corpus Christi Bay. However, the Court said:

"The evidence shows clearly that the water from and to the Gulf flows through a defined channel extending from the strait between the islands to Corpus Christi Bay;

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and it is therefore as much a part of the pass leading from such coast water to the Gulf as the strait itself. The construction of the word 'pass' insisted on by appellant would defeat the evident purpose of the statute. The purpose the Legislature had in view was to enable fish to have free access to and from the coast waters, and if they are allowed to be intercepted in or near the channel aforesaid the purpose would be defeated. In arriving at the sense of the Legislature in the use of the term 'all passes', the purpose it had in view must be consulted."

Similarly, the Court in the Gavina case said:

". . . the pass intended by the legislative act was certainly the entire length of the channel from the bay to the gulf. About this I think there can be no question. This question was recently passed on adversely to appellant's contention in the case of Gibson v. Sterrett, 144 S.W. 1189"

These cases clearly indicate that the Legislature intended to protect the free passage of the fish in or near the channel. It recognized the natural propensities of the fish and endeavored to protect them at points at which they might be intercepted when seeking entrance to the pass.

The natural approach to the pass is apparently the concentration point to which the fish go for entrance. It would appear to be within the area intended to be protected. Since the jetty is designed to function as a part of the pass, and since it appears to definitely influence the movement of the fish and to create conditions which gave rise to Article 941, we conclude that an area within one mile of any part of the original pass or the jetty is within the area prohibited by Article 941.

SUMMARY

House Bill 952, Special Laws, 46th Leg., R.S. 1939, ch. 84, p. 839, is applicable to the waters of any natural or artificial pass

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maintained by the Game, Fish and Oyster Commission as a fish pass, and is not, therefore, presently applicable to Sabine Pass or Sabine Jetty. By the provisions of Article 941, V.P.C., it is illegal to seine with the equipment therein forbidden within one mile of any point on the original Sabine Pass or the Sabine Jetty.

APPROVED:

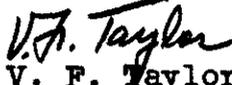
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Yours very truly,

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