



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 2, 1951

Hon. Leonard Passmore
County Attorney
Franklin County
Mt. Vernon, Texas

Opinion No. V-1229.

Re: Legality of the use of
seines or nets with
meshes less than one
inch square in Franklin
County.

Dear Sir:

In your request for an opinion you ask in substance whether or not the use of a seine or net with meshes less than one inch square in Franklin County is punishable under Article 927, Vernon's Penal Code.

Article 927, Vernon's Penal Code, provides:

"Except the ordinary hook and line or trot line, or a set or drag net or seine, the meshes of which shall be three or more inches square, or a minnow seine not more than twenty feet long used for catching bait, no person shall place in any fresh water river, creek, lake, bayou, pool, lagoon or tank, in this State, any net, trap or other device for catching fish, or take or catch any fish from said waters with any net, seine, device, or hook and line or trot line, other than as permitted herein. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than one hundred dollars." (Emphasis supplied.)

Since the enactment of the foregoing Article, a number of local fish laws applicable to particular counties only have been passed which in effect modify the exceptions stated in Article 927. Acts of the 47th Legislature, R.S. 1941, ch. 595, p. 1322, to which you refer in your request, is one of these local fish laws. The pertinent part of this statute provides:

"Section 1. From and after the passage of this Act, it shall be lawful during open season only, for a person to take

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or catch catfish, perch, buffalo, and drum, from the waters of Delta, Hopkins, and Franklin Counties, by hand or with a seine or net having meshes one inch square."

The basic prohibition against the use of seines is still in full effect. The use of a seine is unlawful unless the user falls within one of the exceptions stated in Article 927 or unless he is within the terms of a special act making special exceptions applicable to a particular county. Unless his act falls within such exception, he is subject to punishment for the use of a seine and the penalty for violation of Article 927 applies.

Incidentally, your attention is called to the fact that up until 1945, by provision of Article 951, V.P.C., the months of March and April were closed to seines and artificial bait. In 1945, however, the Legislature passed Article 927a, V.P.C., and Section 5 thereof provides:

"All laws, or parts of laws, local, general or special, insofar as they provide a closed season or period of time when it is unlawful to take or catch fish . . . shall be and are hereby repealed . . ."

It has been held in Att'y Gen. Op. 0-6541 (1945), under a prior administration, that Article 951 was modified by the above provision to permit use of otherwise lawful seines at any time for taking fresh water fish. Likewise, the term "during open season only" appearing in the 1941 law set out above is no longer applicable.

SUMMARY

The use of seines or nets with meshes less than one inch square in the waters of Delta, Hopkins, and Franklin Counties (Acts

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47th Leg., R.S. 1941, ch. 595, p. 1322) is
punishable under Article 927, V.P.C.

APPROVED:

Ned McDaniel
State Affairs Division

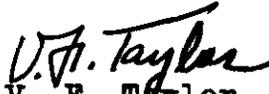
Everett Hutchinson
Executive Assistant

Charles D. Mathews
First Assistant

Yours very truly,

PRICE DANIEL
Attorney General

By


V. F. Taylor
Assistant

VFT:rt:jmc