



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. A. J. Lockett
County Attorney
Comal County
New Braunfels, Texas

Dear Sir:

Opinion No. 0-5848

Re: The possession of catfish
in Comal County.

Replying to your recent letter wherein you request the department's opinion on the following question:

"Is there a closed season on the possession of catfish in Comal County, Texas, and if so, what is the closed season?"

We have carefully considered your request and Article 952 and 952L-1, Vernon's Annotated Penal Code, as well as all amendments thereto, including the amendment in Sec. 1 of Art. 952, passed at the last session of the Legislature, Ch. 169, p. 270, and have concluded that your question is answered by the plain provisions of Sections 1, 2 and 3 of Art. 952L-1, which sections read respectively as follows:

"Sec. 1. It shall be unlawful for any person to fish for, take or attempt to catch any fish in any of the public fresh waters or tributaries of such waters in the Counties of San Saba, Gillespie, Blanco, Kendall, Kerr, Comal, Llano, Mason or Kimble by any means or device other than by ordinary pole and line, set line or throw line equipped with more than two hooks, except in the waters of the Colorado River; and providing that these restrictions shall not apply to artificial lures; and provided that the possession of any tackle, the use of which is prohibited by the provisions of this Act, within two hundred (200) yards of any fresh waters in the Counties named herein, shall be prima facie evidence of the violation of this Act.

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"Sec. 2. It shall be unlawful in the Counties of San Saba, Gillespie, Blanco, Kendall, Kerr, Comal, Llano, Mason, Kimble or Val Verde to sell, offer for sale or have in possession for the purpose of sale any black bass, crappie, catfish, or sunfish, commonly called perch.

"Sec. 3. No person, firm or corporations or their agents shall take, catch or have in their possession any black bass, perch or crappie taken from any fresh waters in said Counties from the 1st day of March to the 1st day of May of any year or to have in possession at any time any black bass of less length than eleven (11) inches, any catfish of less length than nine (9) inches or any crappie (commonly called white perch) of less length than seven (7) inches."

Sec. 4 prescribes a penalty for violation of any of the provisions of said article.

The above quoted sections make it unlawful to have in possession at any time "any catfish of less length than nine (9) inches" taken from any of the fresh waters of Comal County.

We have found no statute making it unlawful to take, catch, or have in possession at any time catfish of nine inches or more in length taken from the fresh waters of said county.

The 1943 amendment, ch. 169, is in no way pertinent to your inquiry. It deals with an entirely different subject. Its purpose is to permit the sale or barter of catfish and other named species of fish taken from the fresh waters of Comal County. It, of course, does not amend the above quoted sections of Art. 952L-1, inhibiting the possession of catfish less than nine inches in length.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ David Wuntch
Assistant

DW:db:bb
APPROVED MAR. 17, 1944
/s/ G. P. Blackburn
ACTING ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY- A.W., Chairman