



**THE ATTORNEY GENERAL
OF TEXAS**

WAGGONER CARR
ATTORNEY GENERAL

AUSTIN 11, TEXAS
November 12, 1964

Honorable R. S. Crawford, Jr.
District Attorney
38th Judicial District
Uvalde, Texas

Opinion No. C-348

Re: Whether the Parks and
Wildlife Commission has the
lawful right to prohibit the
hunting and taking of deer upon
the state-owned dry river beds
of Dimmit, Uvalde, and Zavala
Counties, all other circumstances
being legal, and the river beds
being legally navigable.

Dear Mr. Crawford:

By letter, you have requested an opinion from this office concerning the above question.

Article 3, Section 56, Vernon's Texas Constitution provides that the Legislature cannot be prohibited from passing special laws for the preservation of the game and fish of this State in certain localities. This provision was held in Stephensen v. Wood, 35 S.W.2d 794 (Tex.Civ.App. 1930), certified questions answered 34 S.W.2d 246, to give to the Legislature power to enact such special laws without notice to preserve game and fish whether applicable to the entire State or merely to certain localities.

Pursuant to this constitutional authority, the 57th Legislature, Regular Session, enacted House Bill No. 169, Chapter 99, Section 1 of said laws, applying to Dimmit, Uvalde and Zavala Counties. In Section 1 of said Bill, it was provided that the Game and Fish Commission may by proclamation, rule or regulation provide the means and method and the place and manner in which such wildlife resources may be lawfully taken and further providing that it shall be unlawful to hunt and take game unless the owner of the land shall give consent thereto.

Pursuant to such statute, the State of Texas Parks and Wildlife Commission, prior to the proclamation hereinafter referred to, held public hearings regarding its proposed regulations in this

three-county area. After such hearings, the Parks and Wildlife Commission issued its proclamation on July 15, 1964, said proclamation prohibiting the hunting and taking of deer upon the State-owned river beds in such counties.

It is our opinion that the Legislature lawfully granted to the Parks and Wildlife Commission in House Bill No. 169 the discretionary power to regulate the taking of game animals, game birds or fur-bearing animals by providing the means, method and place and the manner in which such wildlife resources may be lawfully taken in Dimmit, Uvalde and Zavala Counties. The question of the abuse of such discretion, if any, by the Parks and Wildlife Commission is not, nor can it be, before us. Such matters can only be decided by the Courts of the State.

In addition, as noted above, consent of the owner of the land must be obtained prior to the use of lands for the purpose of taking game. It has been the long-established rule in Texas that the State owns the soil underlying navigable streams, whether navigable in fact or by statute. Grayburg Oil Co. v. Giles, 143 Tex. 497, 501, 186 S.W.2d 680 (1945); Landry v. Robison, 110 Tex. 295, 298, 219 S.W. 819 (1920); State of Texas v. Bradford, 121 Tex. 515, 530, 544, 50 S.W.2d 1065 (1932); Diversion Lake Club v. Heath, 126 Tex. 129, 138, 86 S.W.2d 441 (1935); Heard v. Refugio, 129 Tex. 349, 359-360, 103 S.W.2d 728 (1937); Lorino v. Crawford Packing Co., 142 Tex. 51, 56-57, 175 S.W.2d 410 (1943); Chicago, R.I. & G. Ry. v. Tarrant County W. C. & I. Dist. No. 1, 123 Tex. 432, 446, 73 S.W.2d 55 (1934); Maufrais v. State of Texas, 142 Tex. 559, 566, 180 S.W.2d 144 (1944). As noted above, the State, as owner of such lands, has refused its consent to the taking of wild animals upon such property.


SUMMARY

The Parks and Wildlife Commission has the lawful right in the interest of game preservation to prohibit the hunting and taking of deer upon the state-owned dry river beds of Dimmit, Uvalde, and Zavala Counties, pursuant to H. B. 159, Acts 57th Legislature, Regular Session, Chapter 99, page 186. The question of the abuse of such

discretion, if any, by the Parks and Wildlife
Commission is not, nor can it be, before us.
Such matters can only be decided by the Courts
of the State.

Respectfully submitted,

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CBS/lh

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