

FISH AND GAME:
TRAMMEL NETS:

Session of trammel nets in
violation of the game and fish laws.

May 7, 1938 47



Mr. M. J. Huffman,
Prosecuting Attorney,
Wright County,
Hartville, Missouri. .

Dear Sir:

This is in reply to yours of May 3, 1938, requesting an official opinion from this department based upon the following letter:

"On April 23, 1938, in this county, Mr. Jack Frost, a conservation agent of the fish and game department, apprehended two men with an one and one-half inch trammel net. These two men, at the time, were going up the Gasconade river in a boat. They had no fish in the boat at the time of arrest. The net was in a sack and both sack and net were dripping wet. There was no appreciable amount of water in the boat, at least not enough to have got the sack and net very wet. Both men were wearing hip boots and both pairs of boots were wet above the knee. The men refused to tell the agent their purpose in having the net in the boat.

The agent is very anxious to have the case prosecuted. I feel that there is some question about the soundness of the case. However, I have always stood with the fish and game department and intend to as long as I am in this office.

Inasmuch as the statutes only mention 2-inch mesh nets, I am wondering if the men had a right to possess the smaller mesh net, or if, in the event they did have a right to possess such a net, the above state of facts would constitute use of the net under the statute.

I would be very glad to have your opinion in regard to this matter."

In our research on this question, we find that the following sections of the statutes apply: Section 8270, R.S. Mo. 1929, provides in part as follows:

"It shall be unlawful for any person or persons to take, catch, or kill, any fish in any of the waters of this state, by means of any trammel net, gill net, fish trap, firearm, rifle or gun or any other kind of net, trap, firearm, device or any other means other than by ordinary hook and line, gig, spear, trot line, artificial bait, or seine, of the kind and at the time, and in the manner permitted by law."
* * * * *

Section 8273, R.S. Mo. 1929, provides in part as follows:

"The use of seines, hoop nets and trammel nets, is hereby permitted, in the Mississippi, Missouri and Osage rivers, during the months of January, February, March, June, July, August, September, October, November and December of each year, with seines and nets, the mesh of which shall not be less than two inches square; and provided further,

that any person or persons owning land along any of the inland rivers or streams of the state, known as unnavigable streams, or anyone by permission of the said landowner may take fish from such streams during the months of June, July, August, September and October of each year for his or their own consumption or table use, with a two-inch mesh net or seine: Provided, however, that such seines and nets shall not be operated on any of the above named streams within three miles down stream from any dam which has been constructed or may be constructed across the above named streams, or within three hundred yards of the mouth of any stream or slough emptying into such waters, and that the placing of a net, trap, seine, or such device, within that area shall constitute an offense against the laws of the state:" * * * * *

And Section 8274, R.S. Mo. 1929, provides as follows:

"Any person may use a glass or wire minnow trap, or small seine not more than twenty feet in length, and four feet in width, known as a minnow seine, and to be used in catching bait:" * * * * *

These three sections are the only provisions of the statutes in which we find regulations relating to the seining of fish. All of these sections contain provisions against the use of seine or net, but none of them prohibit the possession of such articles, regardless of the size of the mesh of a seine or net. Said Section 8273, supra, permits the use of seines and nets under certain circumstances

May 7, 1938

and at certain times, which have a mesh of not less than two inches square. This section prescribes the minimum dimensions which any seine or net may have for fishing, therefore, the seine or trammel net suggested in your letter, if it is used for the purpose of catching fish, the user would be violating the provisions of the statute and subject to the penalties prescribed therein.

It is a general rule of statutory construction in this state that penal statutes must be strictly construed and nothing can be taken into statutes by intendment or implication.

In the case of State v. Lloyd, 7 S.W. (2d) 344, 346, the court in speaking of construction of criminal statutes, said:

"* * * It is to be construed strictly against the state and liberally in favor of the accused. State v. Krueger, 134 Mo. 262, 35 S.W. 604. Such statutes may not be extended or enlarged by judicial interpretation so as to embrace persons not specifically brought within their terms. No one may be made subject to its provisions by implication."
* * * * *

The foregoing sections of the statutes cited relating to fish and game, come within the classification of the criminal statutes. If these statutes are so construed that possession of a trammel net is a violation of the law, such a construction would have to be made by implication, and this would be against the foregoing rules of statutory construction.

CONCLUSION

Therefore, it is the opinion of this department that the possession of a trammel net of any dimensions is not a violation of the game and fish laws of this state, and that under the set of facts you have submitted

Mr. M. J. Huffman

-5-

May 7, 1938

in your request, we do not think that the defendants have committed such an act as would constitute the use of a trammel net mentioned in your letter.

We are further of the opinion that the use of the trammel net, the mesh of which is less than two inches, is a violation of said Section 8273, supra.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:DA