

Texas

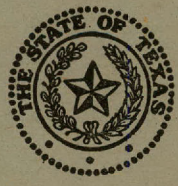
Att'y. Gen'l.

MONTHLY REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF TEXAS

SEPTEMBER 1, 1946
To
DECEMBER 31, 1946

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GROVER SELLERS
ATTORNEY GENERAL

VOL. 8, Nos. 9, 10, 11 and 12



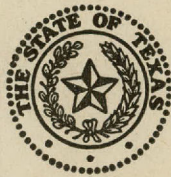
MONTHLY REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF TEXAS

OPINIONS RENDERED

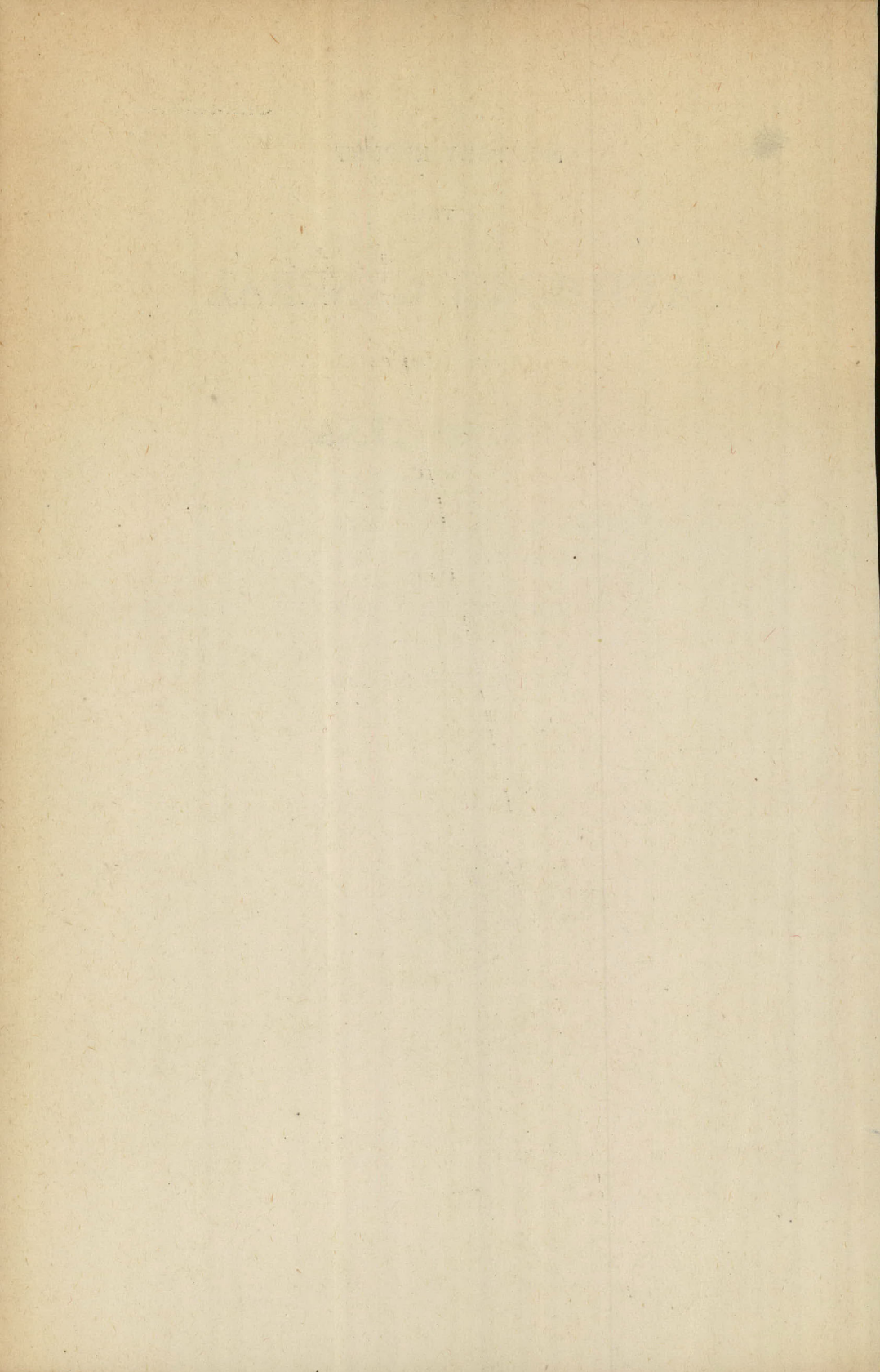
SEPTEMBER 1, 1946

To

SEPTEMBER 30, 1946



GROVER SELLERS
ATTORNEY GENERAL



0-6790 To: W. J. Townsend, County Attorney, Angelina
County
Date: Sept. 23, 1946
Stapp

A newspaper in a dry area can lawfully carry advertisements of alcoholic beverages. Art. 3, Art. 667-24a-1, 3; Art. 667-224(1) (h); V. A. P. C.

0-7028 To: Maureen Moore, Commissioner, Bureau of Labor
Statistics
Date: Sept. 7, 1946
Anderson

An employment agency can lawfully refer skilled labor, such as engineers, draftsmen, etc., to out of State concerns. Art. 1593a, V.A.P.C.; Art. 5221a-4, Secs. 1, 6, 9, 10, 11, 22, V.A.C.S.

0-7057 To: E. N Jones, President, Texas College of Arts and
Industries
Date: Sept. 17, 1946
Ollison

The Texas College of Arts and Industries is without authority to require the payment of a medical-hospitalization fee by all its students. Acts 1939, 46th Leg. S. B. 283, § 1; Acts 1933, 43rd Leg., R. S., Ch. 196, p. 596; Acts 1927, 40th Leg., Ch. 237, p. 351; Arts. 2589c, 2589d, 2654a, 2654c, V. A. C. S.; *Rainey v. Malone*, 141 S. W. (2d) 713; Opinions 0-177, 0-2259.

0-7227 To: John H. Winters, Executive Director, State De-
partment of Public Welfare
Date: Sept. 5, 1946
Lattimore

If an officer takes a delinquent child into his custody prior to the filing of the petition provided for in Section 7 of the Juvenile Delinquency Act, he must bring such child forthwith to the Judge of the Juvenile Court. Acts 1943, 48th Leg., Ch. 204, p. 313; Art. 2338-1, V. A. C. S.; In re Dendy, 175 S. W. (2d) 297; 179 S. W. (2d) 269.

0-7234-A To: Tom Craven, County Auditor, McLennan
County
Date: Sept. 11, 1946
Speer

This opinion is a clarification of Opinion 0-7234 which deals with poll tax exemptions for persons over the age of sixty liv-

ing in a city of 10,000 population or over. Acts 1945, 49th Leg., H. B. 344; Art. 2968, V.A.C.S.; Opinion 0-7234.

0-7242 To: Syrain E. Marbut, County Attorney, Lubbock
County
Date: Sept. 20, 1946
Anderson

Those counties exempt by Article 7005, R.C.S., as amended in 1945, are exempt from all laws regulating the inspection of hides and animals and bill of sale required for same. Art. XVI, Constitution of Texas; Acts 1876, 15th Leg., Ch. 165, p. 295; Arts. 772-785, 1445, 1482, 1488 V.A.P.C.; Arts. 4611-4659, 6972-7007, V. A. C. S.; *Reed v. State*, 22 S. W. (2d) 684.

0-7278 To: George H. Sheppard, Comptroller of Public
Accounts
Date: Sept. 17, 1946
Sandlin

When discovery is made that certain real estate has been omitted from the tax rolls, and the same is assessed in accordance with the provisions of Article 7346 and 7347, R. S., the interest referred to should be calculated at the rate of 6% per annum from the date the taxes would have become delinquent had the property been properly assessed. Art. III, Sec. 55, Constitution of Texas, Arts. 5073, 7298, 7336d, V.A.C.S.; 33 C. J. 196; Opinion 0-2083. (See opinion for citation of additional authorities.)

0-7299 To: Maureen Moore, Commissioner, Bureau of Labor
Statistics
Date: Sept. 7, 1946
Anderson

An employment agency may legally operate under what it terms "Personnel Services" under the Employment Agency Law; it may also charge an employer fees for consulting services, provided this practice is not used in such a way that the applicant is charged more than the legal fee. Art. 5221a-4, V. A. C. S.; Art. 1593a, Sec. 13, V. A. C. C. P.

0-7320 To: Ross Doughty, Jr., County Attorney, Uvalde
County
Date: Sept. 26, 1946
Moller

The County Assessor and Collector of Uvalde County is not authorized to act as the Assessor and Collector of taxes for the

Junior College District in Uvalde County. Art. 2815h, Secs. 7a, 7b, 17, 22, V. A. C. S.

0-7325 To: Shelby K. Long, County Attorney, Jefferson County
Date: Sept. 23, 1946
DeVore

The Commissioners' Court has the legal authority to employ a Tax Expert to advise the Commissioners' Court and/or the Tax Assessor-Collector of his opinion of the values of various industrial property within the county. Arts. 7206, 7212, 1212, V. A. C. S.; *Rober v. Hall* 280 S. W. 289; *Federal Royalty Co. v. State*, 42 S. W. (2d) 670; *Marquart v. Harris County*, 117 S. W. (2d) 494; Opinion 0-5909.

0-7327 To: George H. Sheppard, Comptroller of Public Accounts
Date: Sept. 5, 1946
Anderson

Witnesses shall not receive per diem from the State for attendance upon District Courts and grand juries in counties other than their own unless in obedience to subpoenas issued under the provisions of law. Arts. 461, 463, 1036, V. A. C. C. P.

0-7341 To: George H. Sheppard, Comptroller of Public Accounts
Date: Sept. 11, 1946
Littleton

The Comptroller may not legally approve a claim for a refund of motor fuel taxes unless (1) the claimant was the actual user or consumer of the motor fuel and (2) the claimant purchased such motor fuel directly from a licensed refund dealer. Art. 7065b, Secs. 2a, 13, V.A.C.S.

0-7345 To: Joe P. Flack, County Attorney, Menard County.
Date: Sept. 12, 1946
Blanton

Menard County has no authority to lease, sell, or otherwise dispose of the twenty-five acres of land in question, since the State of Texas has an interest in same. Acts 1935, 44th Leg., Ch. 174; Art. 6144b, Sec. 14; Art. 6144c, V. A. C. S.; *Conley v. Daughters of the Republic*, 156 S. W. 197.

0-7349 To: C. W. Norrid, County Attorney, Motley County.
Date: Sept. 11, 1946
Moller

A County Treasurer, while holding office, may not legally serve as a Deputy Tax Collector. Art. XVI, Secs. 40, 44, Constitution of Texas; Title 36, R. C. S.; Art. 7252, V. A. C. S.; *Kimbrough v. Barnett*, 93 Tex. 310, 55 S. W. 122; Opinion 0-4968. (See opinion for citation of additional authorities.)

0-7362 To: State Board of Education
Date: Sept. 17, 1946
Sparks

The State Board of Education in the exercise of its discretion is authorized and empowered to purchase United States government bonds from agencies other than the United States Government. Art. VII, Sec. 4, Constitution of Texas; Arts. 2669-2675, V.A.C.S.

0-7366 To: Compton White, County Auditor, Freestone County
Date: Sept. 12, 1946
Koch

The fact that property bought by the city for public use is not used for the purpose for which it was originally purchased, but for still another public purpose does not make such property taxable. It is tax exempt if it is municipally owned and non-revenue bearing. Art. VIII, Secs. 1, 2, Art. XI, Sec. 9, Constitution of Texas; Art. 7150, R. C. S.; *City of Abilene v. State*, 113, S. W. (2d) 631.

0-7367 To: Abner L. Lewis, Member Board of Pardons and Paroles
Date: Sept. 5, 1946
Wroe

In the case under consideration the Proclamations issued by the Governor of Texas are considered to be full pardons of the crime committed, and not merely a commutation of the sentence and fine. Art. IV, Sec. 11, Art. XVI, Sec. 2, Constitution of Texas; Arts. 44, 1147, 1148, V. A. P. C.

0-7372 To: Donald E. Tracy, County Auditor, Winkler County
Date: Sept. 11, 1946
McCasland

A County cannot legally pay the expenses of traveling and

registration for firemen who attend a Firemen's Course. Opinions 0-2419, 0-4483, 0-5003, 0-5733.

0-7374 To: W. D. Lacy, County Attorney, Leon County
Date: Sept. 12, 1946
Davis and Reeves

The Commissioners' Court is without legal authority to pay the County Clerk for recording veteran's discharges and for furnishing certified copies of same. Acts 1945, 49th Leg., Ch. 346, p. 587; Art. 1939a, V. A. C. S.; *Galveston, Houston, and San Antonio Ry. Co. v. Uvalde County*. 167 S. W. (2d) 305, 34 Tex. Juris, 522, Opinions 0-6750, 0-6939.

0-7375 To: Bruce L. Parker, County Attorney, Gray County
Date: Sept. 12, 1946
Blanton

A common school district without bonded indebtedness can raise the tax rate from \$1.00 to \$1.50 by the proper election. Acts 1945, 49th Leg., Ch. 304; Art. 2784e, V. A. C. S.

0-7378 To: Pate Beene, County Attorney, Andrews County
Date: Sept. 7, 1946
Speer

A public official may not write insurance for a municipality of which he is an officer. Art. 373, V. A. P. C.; *City of Edinburg v. Ellis*, 59 S. W. (2d) 99; *Flanikin v. Fokes*, 15 Tex. 180; Opinions 0-878, 0-1014, 0-1142, 0-1589, 0-2758, 0-5158, 0-6280.

0-7379 To: H. C. Hooser, County Attorney, Howard County
Date: Sept. 17, 1946
Wroe

Automobile dealers may not legally operate their demonstration cars for their own individual use or pleasure without buying a regular license therefor. Arts. 3, 804, V. A. P. C.; Arts. 6675, 6686a, V. A. C. S.; Arts. 396, 397, V. A. C. C. P.; *Worsham Buick Co. v. Isaacs, et al.*, 51 S. W. (2d) 277; *Ford v. State*, 211 S. W. 233; *George v. State*, 145 S. W. (2d) 187; 42 C. J. 659; Opinion 0-3068.

0-7383 To: Claude Isbell, Secretary of State
Date: Sept. 14, 1946
Speer

A foreign corporation that is appointed trustee in a will must obtain a permit to do business in this state before it can act as

trustee of property located in Texas. Art. 7425b, V. A. C. S.; *Michigan Trust Co., et al, v. Turney*, 36 S. W. (2d) 787; C. J. S., Vol 20, pp. 46, 62.

0-7385 To: C. A. Winborn, District Attorney, Harris County
Date: Sept. 12, 1946
DeVore

Clerks of the County Court shall charge a fee of ten cents (\$.10) for the filing of each transfer or assignment of chattel mortgages. Arts. 3930, 5494, V. A. C. S.; Opinion 0-6765a.

0-7386 To: Tom Seay, County Attorney, Potter County
Date: Sept. 11, 1946
Speer

The authority of a gas company to construct a gas line across a public road is governed by Article 1436 of the Revised Civil Statutes. The authority emanates from the State and not the county. Opinions 0-1805, 0-2442, 0-2978, 0-5726, 0-6791-A.

0-7388 To: Alton C. Arnold, County Attorney, Brazoria
County
Date: Sept. 14, 1946
Archer

This opinion is an interpretation of Article 3264a, R. C. S. relative to the right of eminent domain and the power of a county of the State to condemn land for public purposes. Art V, Sec. 18, Constitution of Texas; Arts. 2352, 3264a, V. A. C. S.

0-7389 To: C. H. Cavness, State Auditor
Date: Sept. 23, 1946
Speer

The Texas Prison System Auditor is legally required to countersign warrants, checks and vouchers on the Special Local Funds and Commissary Funds, and any and all funds of or belonging to the Prison System as well as those drawn from legislative appropriations. Arts. 6166-L, 6166q, V. A. C. S.

0-7392 To: R. F. Robinson, County Attorney, Willacy County
Date: Sept. 20, 1946
Sandlin

A city which had a population of less than 5,000 according to the last Federal Census may levy a tax for the current year

of more than 1½% on the taxable property of such city if the city commission finds as a fact that the population is now more than 7,500. Art. XI, Sec. 5, Constitution of Texas; Arts. 1026, 1028, V. A. C. S.

0-7393 To: C. G. Mendenhall, County Auditor, Chambers
County
Date: Sept. 20, 1946
Sparks

The Commissioners' Court is without authority to invest proceeds derived from the sale of county bonds issued or sold after the effective date of Article 708b, V. A. C. S. (April 12, 1943) in United States Government Treasury Certificates, Defense Bonds or other obligations of the United States of America. Opinion 0-4746.

0-7394 To: Frank X. Vance, County Attorney, Medina County
Date: Sept. 23, 1946
DeVore

When the duly elected independent or non-partisan nominee for public office dies after the dead line set for placing names on the ballot, his name should be placed on the ballot; and if he should receive a plurality of the votes cast, then the office may be filled as in case of a vacancy occurring after the election. Arts. 2978, 2980, 2981, 3019, 3032, 3159, 3160, 3162, V. A. C. S.

0-7395 To: Roger Thurmond, District Attorney, Sixty-Third
Judicial District
Date: Sept. 26, 1946
Blanton

A Common School District and an Independent School District may not legally contract for transfer of scholastics and tax proceeds. Acts. 1945, Ch. 361, Art. VIII, Special Laws of the 49th Legislature; Art. 2699, V. A. C. S.

0-7397 To: C. H. Cavness, State Auditor
Date: Sept. 17, 1946
Speer

The Prison Industrial Revolving Fund may be used to purchase new machinery for the industries carried on in the Penitentiary, but it may not be used to pay any salaries or wages or for the purchase of any livestock or farming program. Opinion 0-7077.

0-7399 To: J. E. McDonald, Commissioner, Department of
Agriculture
Date: Sept. 14, 1946
Barcus

The expense of repairing automobiles may legally be paid out of the \$4500.00 in Item 95 of the Appropriation for the Department of Agriculture.

0-7401 To: Paul Grogan, County Attorney, Montgomery
County
Date: Sept. 30, 1946
McCasland

A County may not properly expend money for the purpose of creating an emergency corps for the purpose of aiding persons injured in wrecks as well as other accidental injuries. Opinions 0-591, 0-2419, 0-4483, 0-5003, 0-5733.

0-7402 To: Paul Grogan, County Attorney, Montgomery
County
Date: Sept. 23, 1946
Davis and Reeves

The Democratic Executive Committee does not have the authority to create a reserve fund but must refund all of the unexpended balance of the monies now on hand after the necessary expenses have been paid. *Kaufman v. Parker*, 99 S. W. (2d) 1094, 1076; Opinions 0-2688, 0-7282.

0-7403 To: Alfred M. Clyde, District Attorney, Tarrant
County
Date: Sept. 26, 1946
Watts

The Euless Independent School District can make its levy of fifty cents (\$.50) on the \$100.00 valuation, as certified for 1946, and fifty cents (\$.50) for debt service, and retain its State Aid. Acts. 1945, 49th Leg., R. S., S. B. 167, Ch. 361, Art. I, Sec. 2.

0-7404 To: Texas Unemployment Compensation Commission
Date: Sept. 12, 1946
Koch

The Texas Unemployment Compensation Act gives the Texas Unemployment Compensation Commission the authority to submit a plan and administer a State Employment Service in ac-

cordance with the Act of June 6, 1933, (48 STAT 113) as amended. Art. 5221b-10, V. A. C. S.; 29 U. S. C. A. 49b, 693, 695a.

0-7406 To: Leslie D. Williams, District Attorney, Washing-
ton County
Date: Sept. 17, 1946
Wroe

The Chief of Police of the City of Brenham can be employed under a contract that pays him a fixed salary per month, plus such fees as he may earn in criminal cases. Art. 95, V. A. P. C.; Art. 1065, Sec. 5, V. A. C. C. P.; Opinions 0-3791, 0-7298.

0-7408 To: Fred V. Meridith, County Attorney, Kaufman
County
Date: Sept. 26, 1946
Allen

A person who is operating a pick-up truck on the highways of this State as a passenger vehicle for his own use only, and not for hire, is not required to have a commercial operator's license.

The operator of a pick-up truck upon the highways of this State is required to carry in such truck or on his person, at all times a copy of the current registration license receipt issued for such truck, regardless of whether it is being used for a commercial purpose. Art. 827, Sec. 5, V. A. P. C.; Arts. 6675a-2, 6687b, Sec. 2a, V. A. C. S.

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