



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Garrison, Jr.
Director, Department of Public Safety
Camp Mabry
Austin, Texas

Dear Sir:

Attention: Mr. L. G. Deats

Opinion No. 0-4218

Re: Whether any members of the Department of Public Safety other than duly commissioned members of the Texas Ranger division are exempt from the restrictions imposed by Section 2, subsection 13, paragraph (e) of Senate Bill No. 423.

We are in receipt of your letter of November 19, 1941, wherein you request the opinion of this department upon the above stated proposition. We quote your letter in full as follows:

"Section 2, subsection 13, paragraph (e) of Senate Bill No. 423, commonly known as a departmental appropriations bill, as passed by the 47th Legislature, Regular Session, provides:

"Except as otherwise authorized by statute, no state employee shall receive or use any passes or other franking privileges from any transportation agency, or any employee so offending shall be immediately discharged. The fact that any transportation agency knowingly extends passes or other franking privileges to any state employee shall constitute sufficient grounds upon which the right of such transportation agency to do business in this state can be forfeited, and the Attorney General is hereby directed to institute proper proceedings to cancel said right of any transportation agency so offending."

"It is respectfully requested that this department be advised whether or not any member of the department other than duly commissioned members of the Texas Ranger division of the Department of Public Safety are exempt from the restrictions imposed by the above quoted portion of Senate Bill No. 423 under the provisions of existing statute."

Under the laws of this State transportation and communications companies are prohibited from giving free passes or franking privileges to any person, firm or association of persons. Article 4005, Vernon's Annotated Statutes, 1925.

In Article 4006, Vernon's Annotated Civil Statutes, the Legislature has set out certain exceptions to this general prohibition. Texas Rangers are specifically mentioned among those persons, firms, or associations of persons excepted from the prohibition. No other members of the Department of Public Safety, nor the Department of Public Safety itself are included in the exceptions under this Article.

However, this Article does contain a general exception for all bona fide peace officers in the discharge of certain duties.

Specifically this Article exempts "any . . . bona fide peace officer when his duty is to execute criminal process . . ." We believe this exception includes any member of the Department of Public Safety who is engaged in the execution of criminal process, if such member is authorized to execute such process.

This department has heretofore held in its opinion No. 0-1373 that members of the Texas Highway Patrol may, under certain circumstances, be considered as exempt from the prohibitions of Article 4005. We quote from this opinion as follows:

"Members of the Texas Highway Patrol are not specifically named amongst the exceptions provided in Article 4006. A Highway Patrolemán being a peace officer, however, we think he could properly receive a pass and make use of the same while engaged in the execution of criminal process."

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It is therefore the opinion of this department and you are respectively so advised, that, except when engaged in the execution of criminal process, and having due authority to do so, no member of the Department of Public Safety other than duly commissioned members of the Texas Rangers division of the Department of Public Safety are exempt from the restrictions imposed by the quoted portion of Senate Bill No. 423 under the provisions of existing statutes.

Trusting that we have fully answered your inquiry,
we are

Yours very truly

APPROVED JAN. 2, 1942

ATTORNEY GENERAL OF TEXAS

/s/ Gerald C. Mann

By

ATTORNEY GENERAL OF TEXAS

/s/ Peter Maniscalco
Assistant

PM:mp

APPROVED OPINION COMMITTEE BY B.W.B. CHAIRMAN

O.K.
R.H.C.