



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

May 15, 1947

Hon. Aug. Celaya, Chairman
Liquor Regulation Committee
House of Representatives
Austin, Texas

Opinion No. V-199

Re: Authority of law enforcement officers appointed by certain Commissioners' Courts under Article 1581-b, V.C.S.

Dear Sir:

Your statement and request for an opinion is as follows:

"1. May officers appointed by Commissioners' Courts to aid in the enforcement of all penal laws of this state, as provided for in Article 1581b of the Revised Civil Statutes of Texas, enforce the liquor laws of Texas in their respective counties and make such arrests and perform other acts in connection therewith in the same manner as other duly constituted peace officers of such counties, provided said Commissioners Courts have designated their duties to include the enforcement of all penal laws of this State?

"2. Does Article 484 of the Penal Code of the State of Texas, which exempts peace officers in the actual discharge of their official duties from the penal provisions of Article 483, P. C., apply to officers appointed by Commissioners Courts under the provisions of Article 1581b, R. C. S., assuming that said officers have been appointed and commissioned by such Commissioners Courts in the manner expressly provided by said Article 1581b?"

Article 1581b of Vernon's Civil Statutes reads in part as follows:

"Section 1. In all counties in this state having five thousand (5,000) or more cattle, sheep and goats rendered for taxation, such counties may employ certain additional law enforcement officers as hereinafter provided.

"Sec. 2. To aid in the enforcement of all penal laws of this state, and ferreting out and detecting any violations thereof, the Commissioners Court of counties having five thousand (5,000) or more cattle, sheep and goats rendered for taxation may, if they deem it necessary, and are hereby authorized to, employ in addition to the officers now provided for by law as many other competent and discreet persons as in the judgment of said court is necessary, and shall fix the compensation; provided, however, no such person, or persons, shall be paid in excess of Five (\$5.00) Dollars per day, while in actual service. Such court shall designate the duties to be performed by all such persons and shall require them to make monthly reports in writing to said court as to the manner in which they have performed such duties."

Article 483 of Vernon's Penal Code, dealing with the unlawful carrying of arms, provides as follows:

"Whoever shall carry on or about his person, saddle, or in his saddle bags any pistol, dirk, dagger, sling-shot, sword cane, spear or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for the purposes of offense or defense, shall be punished by fine not less than \$100.00 nor more than \$500.00 or by confinement in jail for not less than one month nor more than one year."

The exceptions to the provisions of the above statute are found in Article 484 of Vernon's Penal Code, which reads:

"The preceding Article shall not apply to a person in actual service as a militiaman, nor to any peace officer in the actual discharge of

his official duty, nor to the carrying of arms on one's own premises, or place of business, nor to persons traveling, nor to any deputy constable, or special policeman who receives a compensation of forty dollars or more per month for his services as such officer, and who is appointed in conformity with the statutes authorizing such appointment; nor to the Game, Fish and Oyster Commissioner, nor to any deputy, when in the actual discharge of his duties as such, nor to any game warden, or local deputy Game, Fish and Oyster Commissioner when in the actual discharge of his duties in the county of his residence, nor shall it apply to any game warden or deputy Game, Fish and Oyster Commissioner who actually receives from the State fees or compensation for his services."

Peace officers are defined by Article 36 of the Code of Criminal Procedure, as follows:

"The following are 'peace officers': the sheriff, and his deputies, constable, the marshal or policemen of an incorporated town or city, the officers, non-commissioned officers and privates of the state ranger force, and any private person specially appointed to execute criminal process."

Special policemen mentioned in Article 484, supra, are provided for only in Article 995 of Vernon's Civil Statutes and are not distinguished by any other statute. Article 995 provides:

"Whenever the mayor deems it necessary, in order to enforce the laws of the city, or to avert danger, or to protect life or property, in case of riot or any outbreak or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak or any other danger to said city, or the inhabitants thereof, he shall summon into service as a special police force, all or as many of the citizens as in his judgment may be necessary. Such summons may be by proclamation or other order addressed to the citizens generally, or those of any ward of the city, or subdivision thereof, or may be by personal notification. Such special police force

while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city."

Article 1581b, supra, authorizes the Commissioners' Court in certain counties to employ certain additional officers, whose duties are set out in Section 2 thereof, to aid in the enforcement of all penal laws of this State and ferret out and detect any violations thereof. There is no provision in this Article designating these officers as "peace officers", nor is there any authority granted them to make arrests. They are not designated as peace officers by Article 36, Code of Criminal Procedure, nor are they special policemen under Article 995 of Vernon's Civil Statutes. They are merely given the power to aid in the enforcement of the laws and ferret out and detect violations thereof, or to put it into other words, they are to make investigations and help peace officers apprehend violators of the law.

Article 1581b, passed by the 48th Legislature, which appears in Chapter 262, page 389 of the General and Special Laws of Texas, provides:

"Sec. 4. The fact that the stock raisers of this State do not have adequate protection, and the particular fact that under the present meat shortage stock raisers of the State are subject to many new rings of rustlers and thieves, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

Clearly this law was passed as a special measure for the protection of stock raisers and apprehending rustlers and thieves who were stealing stock, and was not intended to authorize the Commissioners' Courts of the respective stock-raising counties to create a new peace officer group to take the place of the hereinbefore defined peace officers.

In the opinion of this department, persons appointed by the Commissioners' Court as provided for in Article 1581b, V. C. S., are not authorized to enforce the liquor laws of Texas in their respective counties, and make such arrests and perform other acts in connection therewith, as they are only investigators to aid the duly constituted peace officers in the enforcement of the law. Your Question No. 1 is therefore answered in the negative.

Since the persons described in Article 1581b, V. C. S., are not peace officers as defined by Article 36, Code of Criminal Procedure, or constituted as peace officers by any other statute, they are not in the exclusion of Article 484 of the Penal Code which allows peace officers to carry arms. Your second question is therefore also answered in the negative.

SUMMARY

Persons appointed by the Commissioners' Courts of certain stock-raising counties under Article 1581b, Vernon's Civil Statutes, are not authorized to enforce the liquor laws of Texas in their respective counties and make arrest in connection therewith, as they are only investigators to aid the duly constituted peace officers in the enforcement of the law.

Such persons are not peace officers as defined by Article 36 of the Code of Criminal Procedure, and are not exempt from the penal provisions of Article 483, of the Penal Code, by Article 484 of the Penal Code, which exempts peace officers from such provisions and allows them to carry arms in the discharge of their official duties.

Yours very truly

APPROVED MAY 15, 1947

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