



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

July 12, 1949.

Hon. E. E. Coons  
County Attorney  
Sherman County  
Stratford, Texas

Opinion No. V-852.

Re: The proper basis, misdemeanor or felony, for the prosecution of an applicant who makes a false statement on an application for an operator's license.

Dear Sir:

Your request for an opinion is substantially as follows:

" . . . Last month a young man was convicted in County Court of Dallam County, Texas, of driving on a public highway while intoxicated. About ten days later he came to Sherman County and made application on the form provided by the Department of Public Safety, to an employee of the Department. On this form is a question inquiring whether the applicant has ever been convicted of driving a motor vehicle while intoxicated, and he answered 'No' . . . The Department issued him a license. Last Monday the Grand Jury of Sherman County indicted this man for false swearing . . ."

For the purpose of this opinion, your second question which is as follows will be discussed first:

"Will an indictment for false swearing lie for this violation?"

Section 6 of Article 6687b, V.C.S., provides:

"(a) Every application for an original or renewal of an operator's, commercial operator's, or chauffeur's license shall be made upon a form furnished by the Department, and every original application shall be verified by the applicant before a person authorized to administer oaths, and officers and employees of the Department are hereby authorized to administer such oaths without charge. No officer

or employee of the State shall be permitted to make any charge to administer such oaths. Every said application shall be accompanied by the required fee.

"(b) Every said application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator or chauffeur, and, if so, when and by what State or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal."  
(Emphasis supplied.)

Section 33 of Article 6687b, V.C.S., is as follows:

"Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this Act to be sworn to or affirmed, is guilty of false swearing and upon conviction shall be punishable by fine or imprisonment as other persons committing false swearing are punishable."

Section 44 of Article 6687b is as follows:

"(a) It shall be a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other laws of this State declared to be a felony.

"(b) In addition to any other penalties hereinabove provided, and unless another penalty is in this Act or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this Act shall be punished by fine of not more than Two Hundred Dollars (\$200.00)."

Article 310, V.P.C., is as follows:

"If any person shall deliberately and wilfully, under oath or affirmation legally administered, make a false statement by a voluntary declaration or affidavit, which is not required by law or made in the course of a judicial proceeding, he is guilty of a false swearing, and shall be punished by confinement in the penitentiary not less than two nor more than five years."

Your fact situation does not reflect whether the application in question was actually sworn to. Assuming that this is an original application for an operator's license which was properly sworn to and is in fact an affidavit and is false, it is our opinion that the same comes within the purview of Section 33 of said Act and the applicant could be indicted and prosecuted for a felony for false swearing.

Section 33 of Article 6687b, V.C.S., by specifically referring to the "false swearing" statute (Art. 310, V.P.C.) indicated conclusively that the making of a false affidavit or false statement knowingly by an applicant for an operator's license in an original application of a matter required by the terms of Article 6687b to be verified could be indicted under the provisions of the "false swearing" statute and not under the general misdemeanor sections of said Act. If the false statement is an affidavit or is of a matter required to be verified under Article 6687b and is actually verified and is false, it should be prosecuted in the appropriate manner as a felony and should be subject to the appropriate defenses.

Considering now, your first question:

"Could this man have been prosecuted for a misdemeanor, and, if so, under what provision of the statutes of Texas?"

Section 32, paragraph (6) of Article 6687b is as follows:

"To use a false or fictitious name or give a false or fictitious address in any application for an operator's, commercial operator's, or chauffeur's license or any renewal or duplicate thereof, or knowingly to

make a false statement or knowingly to cancel<sup>1</sup>  
a material fact or otherwise commit a fraud  
in any such application."

A false statement is declared to be a felony only when it is sworn to, the elements of a complete verification being required. However, if these elements are lacking, it is our opinion that prosecution for a misdemeanor would lie under the provisions of Sections 32 and 44 inasmuch as the act of making a false statement would constitute a misdemeanor under the provisions of this Act.

Therefore, we conclude that if all the elements of false swearing are present, prosecution would lie under the provisions of Section 33, with punishment fixed by Article 310. These elements not being present, the prosecution would lie under the provisions of Section 32 and Section 44.

SUMMARY

One who makes a false statement in an original application for a driver's license regarding a matter required by Article 6687b, V.C.S., is subject to prosecution for a felony for false swearing under Section 33 of said Act with punishment fixed by Article 310, V.P.C. If the elements of false swearing are not present, said applicant may be prosecuted for a misdemeanor under the provisions of Sections 32 and 44 of said Act for making a false statement.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED

*John Greenhill*

FIRST ASSISTANT  
ATTORNEY GENERAL

By

*Burnell Waldrep*  
Burnell Waldrep  
Assistant

<sup>1</sup> So enrolled in original Act. Probably should have read  
"conceal."