Hon. H. H. Wellborn
County Attorney
Rusk County
Henderson, Texas

January 27, 1958

You have requested an opinion as to the proper article of the Texas Penal Code under which to prosecute the criminal offense of the wilful burning of an automobile belonging to another.

Article 1304 of the Penal Code provides:

"'Arson' is the wilful burning of any house included within the meaning of the succeeding article of this chapter."

Article 1318 of the Penal Code provides:

"Whoever shall wilfully burn any building not a house as defined in the preceding chapter, or shall wilfully burn any stack of corn, hay, fodder, grain, or flax, or any pile of boards, lumber, or wood, or any fence or other inclosure, the property of another, shall be confined in the penitentiary not less than two nor more than five years, or be fined not exceeding two thousand dollars."

Article 1323 of the Penal Code provides:

"Whoever wilfully burns any personal property belonging to another, the punishment for which is not otherwise provided for in this chapter, shall be fined not exceeding two thousand dollars."

Article 1350 of the Penal Code provides:

"(1) It shall be unlawful for any person to wilfully injure or destroy, or attempt to injure or destroy, any property belonging to another, of any kind whatsoever, without
the consent of the owner and lienholder, if any, there-
on.

"(2) Whenever the law provides a particular punish-
ishment for the wilful injury or destruction by a certain
means, such as by burning, or whenever a particular
punishment is provided for wilful injury or destruction
of a certain type of property, such as fences, the pro-
visions of this Act shall not be applicable.

"..."

Article 1404b of the Penal Code provides:

"Section 1. Any person who breaks into or enters
a vehicle with the intent of committing a felony or the
crime of theft shall be guilty of a felony and upon con-
viction thereof shall be confined in the State penitentiary
for a term of not more than three (3) years.

"..."

It is our opinion that Article 1323 is the proper article of
the Penal Code under which to prosecute the offense of the wilful burn-
ing of an automobile belonging to another. Articles 1304 and 1318 are
not applicable because they require the burning of a house or other
building, agricultural products, lumber, etc. Article 1350 is not appli-
cable because of Section 2 of that article which provides:

"Whenever the law provides a particular punishment
for the wilful injury or destruction by a certain means,
such as by burning, or whenever a particular punishment
is provided for wilful injury or destruction of a certain
type of property, such as fences, the provisions of this
Act shall not be applicable."

Article 1404b is not applicable because that article requires a breaking
in or entering of the automobile and an intent to commit a felony or
theft. The facts that you have presented do not show a breaking or en-
tering of the automobile or an intent to commit a felony or theft.

Therefore, under the facts that you have stated, Article 1323
of the Texas Penal Code is the proper Article under which to file the above
criminal offense of wilful burning of an automobile belonging to another.
SUMMARY

Article 1323 is the proper Article of the Texas Penal Code under which to prosecute the criminal offense of the wilful burning of an automobile belonging to another.

Yours very truly,

WILL WILSON
Attorney General of Texas

By Richard B. Stone
Richard B. Stone
Assistant

APPROVED:

OPINION COMMITTEE:

George P. Blackburn, Chairman
B. H. Timmins, Jr.
Mary K. Wall
Milton Richardson

REVIEWED FOR THE ATTORNEY GENERAL
BY: W. V. Geppert