



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 11, 1962

Honorable Cecil M. Pruett
County Attorney
Hutchinson County
Berger, Texas

Opinion No. WW-1355

Re: Construction of Article
157a V.P.C., with
reference to the use of
the Great Seal of Texas
on stationery, mailed
by a State Official for
the purpose of campaign-
ing.

Dear Mr. Pruett:

You have requested the opinion of this office on the following question:

"Would the use of the Great Seal of the State of Texas on stationery, mailed by a State Official, for the purpose of campaigning for election, be considered advertising, or giving publicity to goods, wares, or merchandise, or any commercial undertaking, or for any trade or commercial purposes, as defined in this statute?"

We answer your question in the negative.

Section 1 of Chapter 350, Acts of the 54th Legislature, which has been codified as Article 157a, V.P.C. reads as follows:

"No person, firm, or corporation, or any agent, servant, representative, employee, or receiver, of any firm or corporation, shall use any facsimile, imitation, label, trademark, design, device, imprint or form of the Great Seal of Texas for the purpose of advertising or giving publicity to any goods, wares or merchandise or any commercial undertaking, or for any trade or

commercial purpose. Any person, whether in his individual capacity, or as an officer, agent, servant, representative, employee or receiver of any corporation, who shall violate this Article shall be fined not less than Fifty Dollars (\$50) nor more than One Hundred Dollars (\$100), and each day of such use shall be a separate offense. Provided, however, the reproduction of official documents bearing the Great Seal of Texas shall not be a violation hereof if such documents are reproduced in full and are used for a purpose related to the purpose for which said documents were issued by the State." (Emphasis supplied)

It is apparent that the latter portion of the underlined language (i.e., "... giving publicity to any goods, wares or merchandise, or any commercial undertaking, or for any trade or commercial purpose") has no application to campaigning for election or for political purposes, unless a political campaign is included within the meaning of the terms, "commercial undertaking" or "trade or commercial purpose."

It is a fundamental rule of statutory construction that words in common use will be read according to their natural, ordinary, and popular meaning, unless a contrary intention is clearly apparent. In particular, words used in a penal statute should not be broadened or extended beyond their ordinary meaning. 39 Tex. Jur. Sec. 105. In ordinary usage, a political campaign has a customary and popular meaning separate and apart from the ordinary conception of a commercial undertaking, and had the Legislature intended the prohibition to apply also to political campaigning, it could easily have so stated.

It could be argued that the statute prohibits the use of any form of the Great Seal of Texas for the purpose of any type of advertising, or in other words that the language of the statute reading "for the purpose of advertising" is not modified or limited by the subsequent phrases. It is noted that no punctuation separates the word advertising from the remainder of the sentence and we think the clear context of the sentence, if there be any ambiguity, requires a construction that the words "advertising or giving publicity" are used in the conjunctive and not the disjunctive sense and that the type advertising in which the use of the Great Seal is prohibited is described in the remainder of the sentence. In this connection, we are aware that the title of the act reads in part as follows:

"An act to regulate the use of the Great Seal of Texas so as to prohibit the use thereof for advertising or an unofficial use except as provided in this Act..."
(Emphasis added)

While it is true that an act is to be interpreted in the full light of its title, the title itself has no enacting force and cannot confer powers not mentioned in the body of the act. Red River National Bank vs. Ferguson, 109 Tex. 287, 206 S.W. 923. Furthermore, the title or caption of a bill cannot be controlling as against the plain language of the act. Salazar vs. State, 169 S.W. 2d 169, 145 Tex. Crim. R. 529. Here, the only "unofficial use" of the Great Seal which is prohibited in the body of the act relates to commercial advertising. Since this is a criminal statute which must be strictly construed, 39 Tex. Jur. Sec. 146, we do not believe the language of the statute can be extended to include the factual situation set forth in your letter.

Your question is accordingly answered in the negative.

S U M M A R Y

Section 1 of Chapter 350, Acts of the 54th Legislature, which has been codified as Article 157a, Vernon's Penal Code, does not prohibit the use of the Great Seal of Texas on stationery, mailed by a State Official, for the purpose of campaigning for election.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Morgan Nesbitt
Assistant Attorney General

MN:lp

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman

Coleman Gay

Robert Patterson

W. O. Shultz

REVIEWED FOR THE ATTORNEY GENERAL

BY: Houghton Brownlee, Jr.