



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

March 14, 1967

Honorable Clay Cotten
Commissioner of Insurance
State Board of Insurance
Austin, Texas

Opinion No. M-43

Re: Whether Article 1546a,
V.P.C., encompasses the
fraudulent issuance of
title insurance for the
purpose of inducing a bank
to make a loan on property.

Dear Mr. Cotten:

We have received your letter of March 9, 1967, in which you make the following request:

"I request your official opinion as to whether or not an employee of a title insurance company or title insurance agent would be guilty of a violation of Penal Code 1546a if he participated in the following transaction to the extent set out:

"If a builder buys a tract of one hundred (100) acres for subdivision purposes and executes a lien of \$200,000.00 which contains a partial release clause providing for release of each lot upon payment of \$2500.00, and the builder seeks to borrow construction money from a bank to build on various lots and induces an employee of a title insurance company to issue a policy of title insurance or binder for the construction money mortgage without securing a partial release of the vendors lien for the particular lot."

Article 1546a, Vernon's Penal Code, provides as follows:

"Art. 1546a. False written statement of financial condition

"Section 2. Any person who shall, with intent to defraud, either

"(1) substitute one instrument in writing for another and by this means cause the making of a loan or the extension of credit, or

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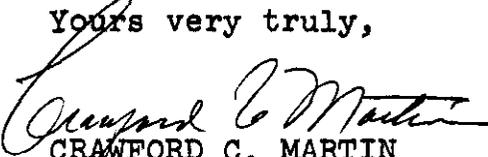
"(ii) induce by any fraudulent instrument in writing the making of a loan or the extension of credit as a part of a transaction whereby either the title to real property is transferred or valuable improvements are placed on real property in this State, whether for the benefit of himself or another, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by confinement in the county jail not exceeding six months, or by a fine not exceeding \$1,000, or by both such fine and confinement. Any person who has been convicted of the misdemeanor offense prescribed in this Section shall, for each subsequent violation of this Section, be guilty of a felony and upon conviction shall be punished by a fine of not less than \$1,000, nor more than \$5,000 or by confinement in the state penitentiary for not more than five years or by both such fine and confinement."

It is the opinion of this office that Article 1546a is sufficiently broad to encompass offenses of the type outlined in your question, and upon proof of the necessary elements of the crime conviction could be had thereunder.

S U M M A R Y

Article 1546a, V.P.C., encompasses the fraudulent issuance of title insurance for the purpose of inducing a bank to make a loan on the property described and upon proof of the necessary elements of such offense conviction may be had thereunder.

Yours very truly,


CRAWFORD C. MARTIN
Attorney General of Texas

RLL/dt

Prepared by R. L. (Bob) Lattimore
Assistant Attorney General

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APPROVED:

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