



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

May 16, 1973

The Honorable Jim Kaster  
Chairman, Committee on  
Intergovernmental Affairs  
P. O. Box 2910  
Austin, Texas 78767

Letter Advisory No. 34

Re: House Bill 1021 relating  
to the making or filing of  
false, misleading or un-  
founded reports to certain  
governmental agencies;  
providing penalties, etc.

Dear Representative Kaster:

You have asked for our opinion as to the constitutionality of House Bill 1021. The Bill provides:

"Section 1. Any person who maliciously and wilfully in writing, or orally, or by the use of any telephone, telegraph, radio, or mechanical device or contrivance whatsoever, by any name known, makes or communicates any false alarm or false report of any act or fact situation initially and voluntarily to any governmental agency for the purpose of causing, or that is calculated to cause, the governmental agency to respond or to perform some act or render some service or that misleads or maligns any officer of the agency, commits a misdemeanor punishable by a fine of not less than \$100 or more than \$5,000, by confinement in jail for not less than 30 days or more than 2 years, or by both.

"Section 2. 'Governmental agency,' means any sheriff's department, constable's, marshal's, or police department, Department of Public Safety, district or county attorney's office, or fire department."

The Bill contains no severability clause nor does it provide that it expressly repeals any other statutes.

In 1957 (Acts 1958, 55th Leg., Ch. 156, p. 342) the Legislature enacted a bill which, after amendment in 1967 (Acts 1967, 60th Leg., Ch. 687, p. 1798) is found as Article 1724, Vernon's Texas Penal Code. It provides in § 1:

"Any person who knowingly and maliciously in writing or orally, or by the use of any telephone, telegraph, radio or mechanical device or contrivance whatsoever, either directly or indirectly shall make, give, send, report, or communicate any false alarm, or falsely report any act or fact situation which causes an Authorized Emergency Vehicle as defined in Article 670ld of Vernon's Texas Civil Statutes to respond to said report or alarm shall be guilty of a felony and shall be fined not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) or imprisoned in the state penitentiary for a period of nor more than five (5) years or by both such fine and imprisonment. "

"Authorized Emergency Vehicle" is defined in § 2(d) of Article 670ld, V. T. C. S., as:

"Vehicles of the fire department (fire patrol), police vehicles, public and private ambulances for which permits have been issued by the State Board of Health, emergency vehicles of municipal departments or public service corporations as are designated or are authorized by the governing body of an incorporated city, and private vehicles operated by volunteer firemen while answering a fire alarm. "

House Bill 1021 contemplates a response broader than that contemplated by Article 1724 of the Penal Code. However, as we read the Bill, it does include a response by a governmental agency by means of a vehicle, as for instance a response by a fire department and, therefore, by definition the two statutes overlap with respect to vehicles of fire departments and police departments. Since one (House Bill 1021) would make violation a misdemeanor and the other (Article 1724) makes violation a felony there is to that extent, an irreconcilable conflict and House Bill 1021 will impliedly

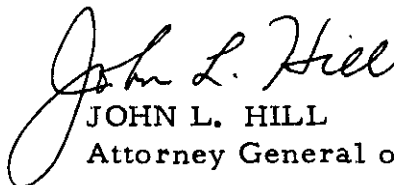
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repeal those conflicting portions of Article 1724 of the Penal Code, under the rule that the later expression of the legislative will constitutes implied repeal of previous laws inconsistent therewith.

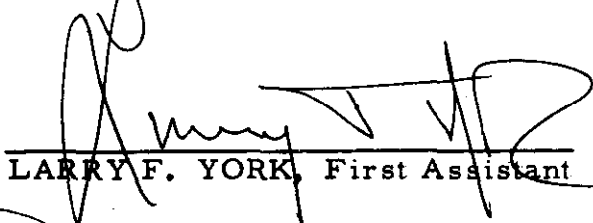
The only other constitutional problem we see in House Bill 1021 grows out of the use of the words "misleads or maligns." We doubt that these are sufficiently certain that men of common intelligence would know their meaning and application.

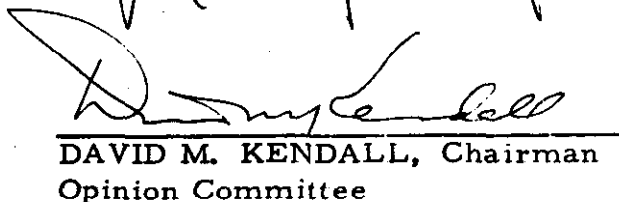
The following authorities support our views expressed above: Allied Finance Co. v. Falkner, 397 S. W. 2d 846 (Tex. 1965); Commercial Standard Fire & Marine Co. v. Commissioner of Insurance, 429 S. W. 2d 930 (Tex. Civ. App., Austin, 1968, no writ.); Stevenson v. State, 167 S. W. 2d 1027 (Tex. Crim. 1943); State v. Shoppers World, Inc., 380 S. W. 2d 107 (Tex. 1964); United States v. Darby, 312 U. S. 100, 85 L ed 609, 61 S Ct 451 (1941); Ratcliff v. State, 289 S. W. 1072 (Tex. Crim. 1927); Texas Liquor Control Board v. Attic Club Inc., 457 S. W. 2d 41 (Tex. 1970).

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee