



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 16, 1998

Mr. Steve Robinson
Executive Director
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

Letter Opinion No. 98-018

Re: Whether Government Code section 497.010, which criminalizes the sale of inmate-made products on the open market, applies to the Texas Youth Commission (RQ-1009)

Dear Mr. Robinson:

You ask whether section 497.010 of the Government Code, which criminalizes the sale of inmate-made products on the open market, applies to products manufactured by youth in Texas Youth Commission ("TYC") institutions. If yes, you ask whether "manufactured" products include youth vocational shop projects. We conclude that although section 497.010 applies to products manufactured by TYC youth, the statute does not apply to vocational shop projects as you have described them.

Current section 497.010, enacted by the Seventy-fifth Legislature in 1997 as part of House Bill 2324, consolidates two repealed laws on the same subject. House Bill 2324 struck section 497.035 of the Government Code, which read in part:

(a) A person commits an offense if the person intentionally sells or offers to sell on the open market in this state an article or product the person knows was *manufactured in whole or in part by an inmate of the institutional division* or an inmate in a correctional facility in any other state, other than an inmate:

(1) who was on community supervision, parole, or mandatory supervision;

(2) employed by an enterprise who has employed the inmate to advantage themselves of the Franchise Tax Credit offered under Subchapter L, Chapter 171, Tax Code, at the time of the manufacture; or

(3) participating in a federally certified prison industry enhancement program.

Act of May 28, 1997, 75th Leg., R.S., ch. 1409, 1997 Tex. Sess. Law Serv. 5278, 5282 (emphasis added). House Bill 2324 also repealed article 9007, V.T.C.S., which read in part:

Sec. 1. It shall be unlawful for any person, firm, partnership, association, or corporation to sell or offer for sale within the State of Texas any goods, wares, or merchandise *manufactured wholly or in part by convicts or prisoners in penal or reformatory institutions*, except convicts or prisoners on parole or probation, and provided further that nothing in this Section shall be construed to forbid or prohibit the sale of such goods produced or manufactured in the prison institutions this State to the State, or to any political subdivision thereof, or to any institution owned or managed and controlled by the State or any subdivision thereof.

Id. § 9, at 5284 (emphasis added). At the same time, House Bill 2324 added section 497.010, which reads:

(a) A person commits an offense if the person intentionally sells or offers to sell on the open market in this state an article or product the person knows was *manufactured in whole or in part by an inmate of the department or an inmate in any correctional facility or reformatory institution* in this state or in any other state, other than an inmate:

(1) who was on community supervision, parole, or mandatory supervision;

(2) employed by an enterprise who has employed the inmate in order to take advantage of the franchise tax credit offered under Subchapter L, Chapter 171, Tax Code, at the time of manufacture; or

(3) participating in a federally certified prison industry enhancement program.

(b) An offense under this section is a Class B misdemeanor.

Id. § 1, at 5280 (emphasis added).

In sum, former section 497.035 barred the sale of products manufactured in Texas by “an inmate of the institutional division” of the Texas Department of Criminal Justice. Former article 9007 barred the sale of products manufactured by “convicts or prisoners in penal or reformatory institutions.” New section 497.010 was intended to combine the two without substantive change as

part of a statutory reorganization.¹ It bars the sale of products manufactured by “an inmate of the department or an inmate in any correctional facility or reformatory institution.” In our view, a youth committed to the Texas Youth Commission is “an inmate in any correctional facility or reformatory institution” and therefore within the scope of section 497.010.

You argue that section 497.010 does not apply to youth in TYC institutions because the youth are not “inmates.” Inmates, you argue, like “convicts” and “prisoners” under former article 9007, are persons convicted of criminal offenses. A youth may be committed to TYC by order of a juvenile court following a finding that the youth engaged in delinquent conduct or conduct indicating a need for supervision.² According to the Juvenile Justice Code (title 3 of the Family Code), a juvenile court adjudication or disposition “is not a conviction of a crime, and does not impose any civil disability ordinarily resulting from a conviction.”³ However, we do not agree that the term “inmate” encompasses only those persons convicted of a crime. The ordinary definition of inmate—“one of a group occupying a single place of residence; *esp.*: a person confined (as in a prison or hospital)”⁴—is not limited to the criminal context or to a person convicted of a crime. Certainly, a person confined in a jail awaiting trial is generally regarded as an inmate or prisoner even though the person has not yet been convicted of an offense. Moreover, section 497.010’s proscription applies to a “reformatory institution.” While not defined by statute, the term “reformatory institution” and terms similar to it are generally used to describe a facility in which delinquent youth are confined.⁵ We think the use of this term indicates that the legislature

¹The purpose of House Bill 2324, according to a bill analysis prepared by the House Corrections Committee, was to “rearrange[] the statutes governing prison industry in a more logical format.” House Comm. on Corrections, Bill Analysis, H.B. 2324, 75th Leg. (1997). The committee reported a number of “substantive changes” made by the bill, but a change to the criminalization provision was not among them. *Id.* Furthermore, in response to questions about whether new section 497.010 changed the law with respect to the sale of inmate-made products on the open market the General Counsel for the Texas Board of Criminal Justice explained to the committee: “It looks like new law, but it is current law. . . . [T]here are two different statutes out there that criminalize the sale of inmate-made goods. We’ve rolled them into one statute with one . . . very slight adjustment to cover everything that they would both cover.” Hearing on H.B. 2324 Before the House Comm. on Corrections, 75th Leg. (Apr. 9, 1997) (transcript available from House Video/Audio Services).

²Fam. Code § 54.04. “Delinquent conduct” and “conduct indicating a need for supervision” are statutory terms defined in the Juvenile Justice Code. See Fam. Code § 51.03.

³Fam. Code § 51.13(a); see *Griego v. State*, 853 S.W.2d 664, 665 (Tex. App.--Houston [1st Dist.] 1993, no writ) (“[A]djudications of delinquency are not convictions.”). There is one exception to this rule: an adjudication that a child engaged in conduct constituting a felony offense resulting in commitment to TYC is a final felony conviction, but only for purposes of the repeat offenders sentencing provisions of the Penal Code. Fam. Code § 51.13(d).

⁴WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 623 (1983).

⁵See *id.* at 990 (1983) (defining “reformatory” as “a penal institution to which young or first offenders or women are committed for training and reformation”); BLACK’S LAW DICTIONARY 1281 (6th ed. 1990) (defining “reformatory” as a “penal institution for youthful offenders where the emphasis is on reformation of the juvenile’s behavior”).

contemplated that the statute would apply to TYC institutions. In our opinion, a youth ordered to be confined in a Texas Youth Commission institution is an "inmate" for purposes of section 497.010.

Your second question is whether "manufactured" products, whose sale on the open market is made criminal by section 497.010, include youth vocational shop projects. You argue that vocational shop projects, which are made primarily for the purpose of acquiring skills, are not "manufactured" products. While we do not agree that vocational shop products are not "manufactured,"⁶ in our opinion they do not fall within the scope of the statute for a different reason.

As you tell us in your letter, vocational shop projects are sold to earn the cost of parts, tools, and other supplies for shop projects, and to provide compensation as an incentive to the youth. Section 61.0431 of the Human Resources Code provides:

(b) Proceeds from shop projects at the facilities under the commission's jurisdiction shall be deposited to the credit of a special account in the General Revenue Fund called the vocational shop fund and may be used only to purchase and maintain parts, tools, and other supplies necessary for the shop projects and to compensate the students who participate in the projects.

It is our understanding that shop projects are not mass produced and sold on the open market, but are sold primarily to family, friends, and visitors of the youth, and to facility employees. We are unable to determine, however, whether this is true at all facilities and in all cases. You also point out that chapter 61, subchapter I, enacted in 1995,⁷ establishes a separate commission industries program whose purposes are to "provide adequate employment and vocational training for children" and "develop and expand public and private commission industries."⁸ Subchapter I permits TYC to contract with private businesses for the purpose of creating and expanding prison industries at TYC institutions,⁹ and allows TYC to lease land to these businesses for the establishment of production facilities.¹⁰ It creates a TYC industries program fund in the state treasury, into which proceeds from the operation of the industries program must be deposited and used for the administration of the program.¹¹

⁶The term "manufactured," which is not defined in the statute, is a broad term that we think ordinarily encompasses the making of products by whatever means. See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 725 (1983) (defining "manufacture" as "to make into a product suitable for use.").

⁷Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 67, 1995 Tex. Gen. Laws 2517, 2575.

⁸Hum. Res. Code § 61.121.

⁹*Id.* § 61.125.

¹⁰*Id.* § 61.128.

¹¹*Id.* § 61.124.

proceeds from the operation of the industries program must be deposited and used for the administration of the program.¹¹

Section 497.010 of the Government Code, in our opinion, is not intended to reach articles and products manufactured as part of a shop project. An analysis of House Bill 2324 prepared by the House Corrections Committee stated that the bill's purpose was to "rearrange[] the statutes governing prison industry."¹² Similarly, the Senate Research Center's analysis stated that "H.B. 2324 provides for the organization and operation of certain prison industries in the Texas Department of Criminal Justice . . . [and] the Texas Youth Commission."¹³ Moreover, in a hearing on House Bill 2324 before the House Committee on Corrections, Representative Ray Allen asked whether section 497.010 would prohibit an inmate from selling a craft item to a private individual when the craft was not a program or project of the prison industries.¹⁴ General Counsel for the Texas Board of Criminal Justice explained that it would not, saying: "[T]here's a statute on the TDCJ books that specifically allows us to allow an inmate to sell the crafts that they've made, and I think that that very specific intent of the legislature being expressed would cure any possible problems . . ."¹⁵ Government Code section 501.013 allows TDCJ to purchase materials for inmate arts and crafts and allows the inmates to sell those arts and crafts to the general public.¹⁶ Like the proceeds from TYC shop projects, proceeds from the sales of TDCJ inmate arts and crafts are used to pay for the materials and compensate the inmates.¹⁷ We believe it to be the intention of the legislature that shop projects made by TYC youth, like arts and crafts made by TDCJ inmates, not be banned from sale to the public.

We also believe that youth vocational shop projects made and sold for the purposes that you have described do not contravene the goal of section 497.010's prohibition on the sale of inmate-made goods on the open market. Like the Ashurst-Sumners Act,¹⁸ a substantially similar federal law, section 497.010 is designed to protect private businesses from competition from goods produced

¹¹*Id.* § 61.124.

¹²House Comm. on Corrections, Bill Analysis, H.B. 2324, 75th Leg. (1997).

¹³Senate Research Center, Bill Analysis, H.B. 2324, 75th Leg. (1997).

¹⁴Hearing on H.B. 2324 Before the House Comm. on Corrections, 75th Leg. (Apr. 9, 1997) (transcript available from House Video/Audio Services).

¹⁵*Id.*

¹⁶Gov't Code § 501.013.

¹⁷*Id.*

¹⁸The Ashurst-Sumners Act, 18 U.S.C. § 1761, *et seq.*, criminalizes the transport in interstate commerce or from any foreign country into the United States any goods made by convicts or prisoners or in any penal or reformatory institution, with certain exceptions.

with inexpensive prison labor.¹⁹ It is our understanding that TYC shop projects are made neither for the purpose of competing on the open market nor on a scale that would allow them to do so. For this reason, and those stated above, we conclude that products made in vocational shop projects in Texas Youth Commission institutions do not fall within the scope of section 497.010.

S U M M A R Y

Section 497.010 of the Government Code, which criminalizes the sale of inmate-made articles and products on the open market, applies to articles and products manufactured by youth in Texas Youth Commission. Section 497.010 does not apply to articles and products made in vocational shop projects by youth in Texas Youth Commission institutions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara Griffin". The signature is written in a cursive, flowing style.

Barbara Griffin
Assistant Attorney General
Opinion Committee

¹⁹See *Wentworth v. Solem*, 548 F.2d 773, 775 (8th Cir. 1977).