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January 16, 1939

Mr. A. A. Miller
County Attorney
Newton County
Newton, Texas

Dear Mr. Miller:

Opinion No. 0-83
Re: Construction of Articles
1321 and 1330, Penal Code
of Texas

Your request for an opinion regarding the construction of Articles 1321 and 1330 of the Penal Code of Texas has been received by this office.

Articles 1321 and 1330 read as follows:

"Art. 1321. Burning woodland or prairie. Whoever wilfully or negligently sets fire to, or burns, or causes to be burned, any woodland or prairie not his own, shall be fined not less than fifty nor more than three hundred dollars. This offense is complete where the offender sets fire to his own woodland or prairie and the fire communicates to the woodland or prairie of another

"Art. 1330. Firing forest or cut-over land. Whoever wilfully or negligently sets on fire or causes to be set on fire any forest, cut-over, brush or grass land not his own; or sets on fire or causes to be set on fire any forest, cut-over, brush or grass land, belonging to himself, and allows such fire to escape to any forest, cut-over, brush or grass land, not his own; or wilfully or negligently suffers any fire set by himself to damage any property of another, and any person

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setting fire or causing fire to be set for the purpose of burning debris on areas worked or cupped for turpentine and wilfully or negligently allowing such fire to spread to adjacent areas not then being so worked or cupped, shall be fined not less than ten nor more than two hundred dollars."

Article 7 of the Penal Code of Texas, provides:

"This code and every other law upon the subject of crime which may be enacted shall be construed according to the plain import of the language in which it is written without regard to the distinction usually made between the construction of the penal laws and laws upon other subjects, and no person shall be punished for an offense which is not made penal by the plain import of the words of a law."

Article 8 of the Penal Code of Texas, provides:

"Words which have their meaning specially defined shall be understood in that sense, though it be contrary to their usual meaning, and all words used in this code except where a word, term or phrase is specifically defined, are to be construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed."

In the construction of the statute, the legislative intent if that intent cannot be ascertained, must govern. When that intention is discovered it will prevail even over the literal import of words. *Cain v. State*, 20 T. 355.

For the purpose of ascertaining the intention of the Legislature enacting a statute, the language employed in the act is first to be resorted to. If the words employed are free from ambiguity and doubt and express plainly, clearly and distinctly intent according to the most natural import of the language, there is no occasion to look elsewhere. *Murray v. State*, 21 C. R. 620.

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It is a well settled rule in the construction of statutes and for the purpose of arriving at the legislative intentions that all laws on the same subject matter are to be taken together, examined and considered as if they were one law. *Cain v. State*, 20 T. 355.

In view of the foregoing authorities, we must look at the specific language of Article 1321 and Article 1330 to determine what offenses they define and the penalties they prescribe. In Article 1321, the words "woodland or prairie" are used, while in Article 1330, the words "forast, cut-over, brush or grass land" are used. Therefore, it is the opinion of the writer that these statutes do not cover the same thing but similar things and in determining under what statute an offense should be charged, the facts in the specific case are controlling and the offense should be charged under the statute that clearly defines the offense and the county attorney should determine from the facts the statute under which the complaint is filed.

Trusting that the foregoing answers your inquiry,
I remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Andell Williams*
Assistant

AW:AW

APPROVED:

Gerald Mann
ATTORNEY GENERAL OF TEXAS

WPH