



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

February 23, 1939

Mr. Leo C. Buckley
County Attorney
Zapata County
Zapata, Texas

Dear Sir:

Opinion No. 137

Re: Construction of Articles 1445, 1447
and 1449 of the Penal Code with re-
spect to whether or not hogs are
included therein.

This will acknowledge receipt of your letter
of February 15, 1939, in which you request the opinion
of this Department on the following question:

"Do the provisions of Articles 1447 and
1449 (PC), relating to butchering unmarked
or unbranded animals and failing to report
animals slaughtered, respectively, include
hogs as 'animals'? Article 1445 (PC) express-
ly pertains to 'any animal of the horse, ass
or cattle species' and Article 1446 (PC) is
expressly limited to 'any animals such as are
specified in the preceding article'; however,
the two succeeding articles do not do so,
and I am puzzled as to their interpretation.
I would appreciate knowing how these articles
(Nos. 1447 & 1449 of the Penal Code) are
usually construed."

Article 1445 of the Penal Code of Texas, 1925,
is as follows:

"Upon the trial of any person charged
with the theft of any animal of the horse,
ass or cattle species, the possession of
such stolen animal by the accused, without
a written transfer or bill of sale contain-
ing a specific description of such animal,

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shall be prima facie evidence against the accused that such possession was illegal."

Article 1447 of the Penal Code of Texas, 1925, is as follows:

"If any butcher or other person engaged in the slaughter of animals shall kill or cause to be killed any unmarked or unbranded animal for market, or shall purchase and kill or cause to be killed, any animal, without having taken a bill of sale or written transfer from the party selling the same, he shall be fined not less than fifty nor more than three hundred dollars."

Article 1449 of the Penal Code of Texas, 1925, reads as follows:

"If any person engaged in the slaughter and sale of animals for market in any county, city, town or village in this State shall fail to report to the commissioners court of the county in which he transacts such business, at each regular term thereof, the number, color, age, sex, marks and brands of every animal slaughtered by him since the last term of said court, accompanied with a bill of sale or written conveyance to him of every animal slaughtered, save such as were raised by himself, which shall be specified, he shall be fined not less than fifty nor more than three hundred dollars."

The two articles next above quoted deal with the butchering of unmarked and unbranded animals and makes provision that any person engaged in the business of slaughtering and sale of animals for market shall report at each regular term of the Commissioners' Court in the county a list of such animals slaughtered by him and accompanied with a bill of sale of every animal so slaughtered and listed therein.

It will be noted that Article 1445 above quoted is specifically limited to "any animal of the horse, ass or cattle species."

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In the case of Wheeler vs. State, 41 SW 615, the jury was given the following instruction:

"You are instructed that the law requires of a butcher that he take a bill of sale to cattle bought and slaughtered by him as such butcher, but no law exists requiring a purchaser of hogs to take a bill of sale therefor to show his good faith in the possession."

The court did not specifically pass upon the law involved in this instruction but, after expressing doubt as to the need for such instruction in the particular case involved, did hold that the instruction was sufficient. The dicta in this case was to the effect that hogs were not and could not be included in the terms and provisions of Articles 1447 and 1449, Penal Code.

It is, therefore, the opinion of this Department and you are so advised that Article 1447 and 1449 of the Penal Code do not apply to hogs.

Trusting that this satisfactorily answers your inquiry, I am

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Lloyd Armstrong
Assistant

LA:AW

APPROVED:

(Signed) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS