



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

HERALD C. MANN
ATTORNEY GENERAL

March 7, 1939

Mr. F. E. Rightor, Secretary
State Board of Registration
for Professional Engineers
P. O. Box 23
Austin, Texas

Dear Sir:

Opinion No. O-394
Re: Definition of private dwelling
under Article 3271a

Your request for an opinion upon the following question:

"Under Senate Bill 74, Regular Session, 45th Legislature, what is a 'private dwelling'?"

has been received by this Department.

Section 20(f) of Article 3271a, Revised Civil Statutes reads as follows:

"Nothing in this act shall be construed to apply to persons erecting or building any private dwelling."

The entire Article 3271a provides for the registration of professional engineers and the regulation of the practice of engineering in Texas and provides penalty for persons unlawfully practicing engineering, as more particularly set out and defined in Article 3271a.

Corpus Juris, Vol. 50, pages 371-2, reads as follows:

"Private residence or dwelling--A building intended and designed for the convenient accommodation of but one family; a dwelling house for a single family; a single building or structure in which the possessor actually resides."

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The case, *Walter vs. Haslett*, 186 Pac. Rep. 622, a California case, holds that a duplex or two family house is not a private dwelling.

The case, *Levy vs. Schreyer*, 69 NE 598, holds that a lodging house or tenement house is not a private dwelling.

The case, *Paine vs. Bergrose Developing Corp.*, 198 NYS 311 holds that a private dwelling is a place or house in which a person or family lives in an individual or private state and that a covenant restricting the use of the premises to the purpose of a private dwelling is violated by the conversion of a house theretofore used as a residence for a single family into a residence for two families, even though the outward appearance of the house was not materially affected.

The case, *Shapin vs. State*, 296 SW 1095-6, holds that a tent in which defendant lived was a private dwelling so as to authorize search thereof for intoxicating liquors.

The case, *Loose vs. State*, 81 SW (2nd) 93, holds that a cabin constructed on automobile chassis is a private dwelling.

Article 1391, Penal Code of Texas, defines the term "private residence" as any building or room occupied and actually used at the time of the offense by any person as a place of residence.

Article 1395, Penal Code of Texas, defined the term "house" as follows:

"A house within the meaning of this chapter, is any building or structure erected for public or private use, whether the property of the United States, or of this State, or of any public or private corporation or association, or of any individual, and of whatever material it may be constructed."

The case, *Willis vs. State*, 25 SW 1119, holds that a fruit stand built in the shape of a piano box but large enough for the proprietor to stand in is a house.

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An ordinary "smoke house" is included in the definition under Article 1395 as a house. *Albritton vs. State*, 26 SW 398.

The term "private residence" or "dwelling house" used in a restrictive covenant, means a dwelling house for a single family, so that as a matter of law a duplex is in violation of such covenant. *Ward vs. Prospect Manor Corporation*, 206 NW 858-9, 46 ALR 364.

Based upon the above definitions, and in view of Article 3271a of Revised Civil Statutes of Texas, which is known as the Professional Engineers Law, which regulates the practice of professional engineering in Texas and in view of Section f of Section 20 of said law, you are respectfully advised that it is the opinion of this Department that the term "private dwelling" as used in Section f of Section 20 of the Professional Engineers Law is as follows:

"A private dwelling is a house or building intended and designed for the convenient accomodation of but one family."

You are further advised that it is the opinion of this Department that duplexes, tenement houses and apartment houses are not private dwellings under Section f of Section 20 of Article 3271a.

Very truly yours

ATTORNEY GENERAL OF TEXAS

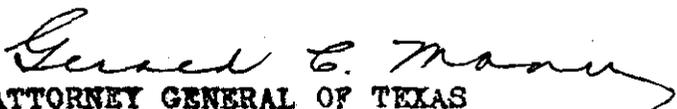
By



Wm. J. Fanning
Assistant

WJF:AW

APPROVED:


ATTORNEY GENERAL OF TEXAS