



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Hon. J. P. Bryan
County Attorney
Brazoria County
Angleton, Texas

Dear Sir:

Opinion No. 0-1114
Re: May two persons have the same figure as a brand but place it at a different point on the animal's body?

We have for consideration your letter requesting our opinion as to whether under the provisions of Art. 6899d, Vernon's Annotated Civil Statutes, two persons could have the same figure as a brand but place it at a different point on the animal's body.

The question is a novel one. We can appreciate your statement that you have been unable to locate any authority on the subject. We have searched available authorities and find but little in the books touching upon the question you ask.

The statutes you refer to require each owner of any livestock in Brazoria County subject to branding under the provisions of chapter 1 of title 121 of the Revised Civil Statutes of Texas, 1925, to have his mark and brand recorded in the office of the county clerk, whether previously recorded or not. No mention is made in the Act of the provisions of Art. 1486, Penal Code. We quote said article:

"Any county clerk who shall record any brand when the person having the same recorded fails to designate the part of the animal upon which the same is to be placed shall be fined not less ten (\$10), nor more than fifty (\$50) dollars."

In the case of PRIESMUTH vs. STATE, 1 Tex. Cr. R. 480, the defendant had been convicted of cattle theft

Hon. J.P. Bryan, page 2

and on appeal the court wrote:

"There is no evidence shown in the record before us that the property alleged to have been stolen was the property of the person alleged in the indictment to be the owner, except that furnished by the record of the brand of Henry B. Scheiner, * * * . The 20th and 42nd sections of the Act of the Legislature, approved March 23, 1874 (Pamphlet Acts, 33), require that in recording brands, the person having the same recorded shall designate the part of the animal upon which the brand is placed.

"The record of the brand of Henry B. Scheiner, as given in the statement of facts, says 'the brand was to be put upon the hip', while the evidence shows that the brand on the animals alleged to have been stolen was placed on the ribs. These discrepancies are too great and too material to warrant a conviction of a felony when the proof of ownership depended alone, or mainly, upon the evidence furnished by the recorded brand. The law seems to make the particular portion of the animal upon which the brand is placed equally as important as the letters or characters used in the brand itself. On this account it is the opinion of the court that the court below erred in overruling the defendant's motion for a new trial." (Underlining ours).

In the case of THOMPSON vs. STATE, 7 S.W. 589, Judge Hurt uses this language:

"Art. 783 (Present P.C. Art. 1486) supra, provides that if any clerk of the county court shall record any brand when the person having the same recorded fails to designate the part of the animal upon which the same is to be placed, shall be fined not less than ten (\$10) nor more than fifty (\$50) dollars. Unless the part of the animal upon which the brand is to be placed is designated, the brand should not be recorded at all, and hence could be evidence of nothing; though it should be recorded, the act of record-

Hon. J.P. Bryan, page 3

ing such a brand by the clerk is an offense against the laws of this state. * * * "

There must be certainty as to the portion of the animal upon which the brand is to be placed; see REESE vs. STATE, 67 S.W. 325; STEED vs. STATE, 67 S.W. 328.

Also, we refer you to the cases of HARWELL vs. STATE, 2 S.W. 606; HAYS vs. STATE, 17 S.W. 940; MASSEY vs. STATE, 19 S.W. 908; MCGREW vs. STATE, 20 S.W. 740; DUGAT vs. STATE, 148 S.W. 789.

From a reading of the above cases and the application of the Penal Statute, although said article may not be applicable to Brazoria County (see Art. 7005, Vernon's Ann. Civ. Stats.), we hold the opinion that you were correct in advising your county clerk that it is possible for two persons to have the same figure as a brand, if they place it at a distinctively different place on the animal's body.

Trusting the above satisfactorily answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Benjamin Woodall*
Benjamin Woodall
Assistant

BW:ob

APPROVED NOV 1, 1939

Geord B. Mans
ATTORNEY GENERAL OF TEXAS

