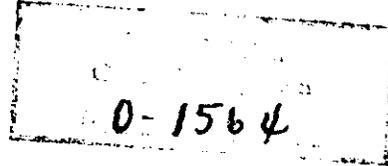




OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL



Honorable Stephen P. Herbert  
County Attorney  
DeWitt County  
Cuero, Texas

Dear Sir:

Opinion No. O-2192  
Re: Would the fact that Art.  
567-B, H. B. 190, 46th  
Leg., Reg. S., repeals Sec.  
4 of Art. 1546, P. C.,  
prevent the prosecution  
now for swindling by worth-  
less check as defined in  
Sec. 4, Art. 1546, P. C.,  
where said check is not  
prescribed by limitation?

Your recent request for an opinion of this Department on the above stated question has been received.

Your letter reads in part as follows:

"Would the fact that Art. 567-B P.C., House Bill No. 190, 46th Leg., Reg. Ses., repeals Sec. 4 of Art. 1546 P.C., prevent the prosecution at this time for swindling by worthless check, as defined in Sec. 4 of Art. 1546 P.C., where said check are not prescribed by limitation.

"In other words, we have had brought to this office, a few checks which are specifically covered by Sec. 4 of Art. 1546 P.C., and parties holding said checks wish to file complaints.

"I find no authority to support the contention by some, that, because the bad check law (Art. 567-B, P.C.) repeals Sec. 4 of Art. 1546 P.C., as of Sept. 20, 1939, no complaints could be filed and no prosecutions had since said date of Sept.

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20, 1939. In other words, it would appear to me that if one cannot be prosecuted at this time for having committed a criminal offense prior to September 20, 1939 under Sec. 4 of Art. 1546 P.C., it would seem that the later hot check law, Art. 567-B P.C., would be retroactive."

In an opinion rendered by the Court of Criminal Appeals in the case of Padlock vs. the State of Texas, delivered February 14, 1940, (not yet reported) your question was answered in the negative.

We quote from the above mentioned opinion as follows:

"By House Bill No. 190 of the 46th Legislature, Chapter 17, Volume 1, page 246, General Laws, a new act was passed covering the subject of swindling by bad checks. Section 7 of said act, in specific language, repeals Section 4 of Article 1546 of the Penal Code. That is the article under which the present prosecution is had. The question has been raised as to whether or not the repeal of that section by the new act subsequent to the commission of the offense would bar the prosecution.

"The offense under consideration is alleged to have occurred in February, 1939, and was tried at the July term of court in 1939. The 46th Legislature adjourned on June 21, 1939, and said House Bill No. 190 did not become effective until 90 days after adjournment.

"Article 1546 P.C. was in effect at the time of the alleged commission of the offense and at the time of the trial. Of course, if Art. 1546, P.C., had been repealed, and the act therein denounced was no longer an offense, this prosecution would be ended, but the 46th Legislature (House Bill No. 190), while repealing Art. 1546, P.C., also re-enacted a statute which made offenses the same acts which had theretofore been denounced as such in Art. 1546. The penalty was also increased. Under the circumstances stated, Arts. 13, 14, 15 and 16 of the Penal Code are operative. They are construed and given effect in *Ash v. State*, 134 Tex. Cr. R. 208, 114 S. W.

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(2d) 889, and the cases therein cited, and also in Spangler v. State, 135 Tex. Cr. R. 36, 117 S. W. (2d) 63; Stansbury et al v. State, 111 S. W. (2d) 717.

"It is not to be understood that we are here construing or passing on the Constitutionality of the Act of the 46th Legislature in question. The extent of our holding is that under Arts. 13 to 16, inclusive, of the Penal Code, said Act does not affect the present prosecution.

"It is therefore our conclusion that prosecution will lie for offenses committed prior to September 21, 1939. Further that (than) this, it is sufficient to say that the present case does not raise any question as to the constitutionality of the re-enactment above referred to as House Bill No. 190, Acts of the 46th Legislature."

Our opinion No. 0-1564 which is in conflict with the holding of this opinion is hereby expressly overruled.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Ardell Williams*

Ardell Williams  
Assistant

AW:EW

APPROVED APR 17, 1940

*Gerard B. Mann*

ATTORNEY GENERAL OF TEXAS

