



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-2758

Re: Is a trustee of an independent school district, who sells several thousands of dollars worth of shrubs to the school district through a third person who serves merely as a figurehead, subject to criminal prosecution under Article 373 of the Penal Code of Texas, or under any statute of Texas?

Your letter of September 18, 1940, requesting a legal opinion of this Department touching the question stated above, reads in part as follows:

"A trustee of the Alvin Independent School District, while a member of the Board, acting through a third party, sold several thousands of dollars worth of shrubs to the Alvin Independent School District. I think the facts will clearly show that the third party was merely a figurehead. This action took place prior to June 1st, 1939, and I, therefore, do not think that Article 178-a, of the 1925 Revised Statutes would be applicable.

"In my opinion, I do not believe that the trustee was guilty of violating any criminal statute of this State. The only statute that I can find on the point is Article 373, of the 1925 Revised Statutes, which, as you know, covers the officer of any county or any city or town. I recognize that school trustees have been held to be county officers. 37 Tex. Jur., 736."

In Opinion No. 0-1589 this Department held:

"We conclude that the sale of gasoline by a person to an independent school district, such person being a trustee of said school district, to be used in a school bus is not in violation of Article 373, Penal Code, notwithstanding that the contract is void as against public policy. We may say further we have been unable to find any article in the Penal Code which would make this act a crime."

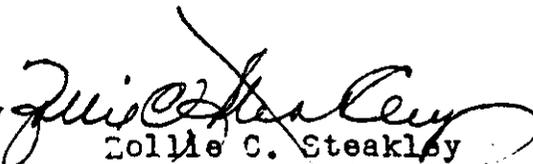
This opinion controls the question which you have asked and it is accordingly answered in the negative. We are enclosing herewith a copy of this opinion for your information.

Assuming the facts to be as you have stated, namely, that the sale of shrubs to the Alvin Independent School District was in truth and in fact a sale to the district by a trustee of the district, we point out that the contract of sale is void as decided in analogous situations in our Opinion No. 0-1589, as well as in our Opinions Nos. 0-878, 0-1142, and 0-1014, copies of each of which are enclosed herewith for your information.

Yours very truly

ATTORNEY GENERAL OF TEXAS

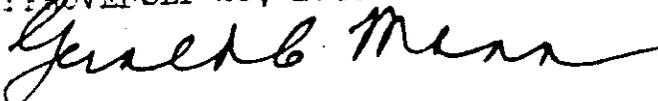
By

  
Collier C. Steakley  
Assistant

ZCS:BBB

ENCLOSURES

APPROVED SEP 25, 1940

  
ATTORNEY GENERAL OF TEXAS

BWTS