



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Robert F. Peden, Jr.  
County Attorney  
Matagorda County  
Bay City, Texas

Dear Sir:

Opinion No. 0-3048  
Re: Pleas of guilty in misdemeanor  
cases may not be legally ac-  
cepted on Sunday.

Your request for opinion has been received and care-  
fully considered by this department. We quote from your re-  
quest as follows:

" . . . Is what is commonly known as a Sun-  
day Judge a legal means of accepting a man's  
plea of guilty in a misdemeanor case?"

12 Texas Jurisprudence, Section 351, Criminal Law,  
page 712, reads in part as follows:

" . . . The court has no authority to ren-  
der a judgment on Sunday. A judgment entered  
of record on that day is not only erroneous,  
but is absolutely void. . . ."

We quote from the case of Shearman v. State, 1 Texas  
Court of Appeals Reports, pages 217-218, as follows:

"Now, it will be seen that, in the case we  
are considering, the Sunday upon which the pro-  
ceedings complained of were had was in the very  
midst of the regular term of court, and not the  
Sunday immediately following or succeeding the  
expiration of the regular term.

"Neither of the statutes above quoted - and  
we believe they are all the law enacted in this

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state bearing directly upon the subject - tend to throw any light upon the question before us. We turn, therefore, to the common law, because our statute further provides that, 'whenever it is found that this Code fails to provide a rule of procedure in any particular state of case which may arise, and is, therefore, defective, the rules of the common law shall be applied and govern.' Pasc. Dig., Art. 2493.

\*The subject is thoroughly and ably discussed in Baxter v. The People, 3 Ill. (Gilm.) 384, 385, 386. We take the liberty of quoting fully from the opinion of Caton, J., delivered in that case. He says: 'Had the court the right to receive the verdict and pronounce judgment on Sunday? That courts have no right to pronounce a judgment, or do any other act strictly judicial, on Sunday, unless expressly authorized by statute, seems to be too well settled to admit of doubt, by the decisions in England and in this country. The leading case on this subject is that of Swann v. Brown, 3 Burr. 1595, where it was held by the court of King's Bench that the court could not sit on Sunday and give a valid judgment, it not being a judicial day. It appears that anciently, among Christians, courts did sit on Sunday, but by a canon of the church made in the year 517 this was prohibited, and that rule seems to have been adopted into the common law, and may be considered well settled. But this prohibition seems to be confined to the entering of judgments of record, and other like judicial acts, for we learn from the opinion of Lord Mansfield in the same case that it was assigned for error in the exchequer that the information (for engrossing butter and cheese contrary to the statute) was exhibited to the court on the 13th day of October,

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which in the year (20 Jac. 1) was on Sunday, and, therefore, not "dies juridicus." The question seems to have been frequently before the English courts and the courts of most of the states of the Union, and the decisions are very uniform that a judgment cannot be entered of record on Sunday. 3 Thomas' Coko, 354; 2 El. Com. 277; Mackelday's case, 5 Coke, 66; Pearce v. Atwood, 13 Mass. 324; Chapman v. The State, 5 Blackf. (Ind.) 111; Nabors v. The State, 6 Ala. 200; 4 N. H. 158; Authur v. Mosby, 2 Bibb, 589; Story v. Elliott, 8 Cow. 27; 1 Wend. 57. To these authorities we may add Colman v. Henderson, Litt. (Ky.) Sel. Cas. 171; Vanderwerker v. The People, 5 Wend. 530; Harper v. The State, 43 Texas, 431.

"These cases all show that a judgment entered of record on Sunday is not only erroneous, but is absolutely void.

"But although the law seems to be well settled that a judgment cannot be entered of record on Sunday, yet I think it equally well settled that a verdict of a jury may be entered of record on Sunday. See following authorities: Heidkoper v. Cotton, 3 Mass. 56; Hoghtaling v. Osborn, 15 Johns. 118; Heller v. English, 4 Strobn. (S. C.) 586; True v. Phinley, 36 Ms. 466.

"The verdict of the jury may be returned and received on Sunday. Cory v. Silcox, 5 Ind. 370; Rosier v. McColly, 9 Ind. 587; McCorkle v. The State, 14 Ind. 39; Joy v. The State, 14 Ind. 139; Webber v. Merrill, 34 N. H. 202; Roberts v. Bower, 5 Hunt (N. Y.), 558.

"We fully concur in the conclusion arrived at by the learned judge in Baxter v. The People, expressed in these words: "We think the authorities clearly establish that, when a cause is submitted to the jury before twelve o'clock Saturday night, the verdict of

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the jury may be received on Sunday; but that it is not a judicial day for the purpose of rendering any judgment, and if it attempt to render a judgment, still in law it would be no judgment, but absolutely void, and will be so declared, and may be reversed by this court. Not that such reversal will take from it any force or vitality, for it never had any, not having been rendered by a court having authority to render any judgment whatever at this time.' Ib. 386."

The Shearman case, supra, has been followed by the Texas Court of Criminal Appeals in the recent cases of Bloss v. State, (1934) 75 S. W. (2d) 694 and Guerra v. State, (1939) 136 Texas Criminal Reports 412. We quote from the court's opinion in the Guerra case as follows:

"It appears from bill of exception No. 1a that the court charged the jury on Sunday, March 6, 1938, at 1:50 P.M. Charging the jury is strictly a judicial act. Moss v. State, 173 S. W. 859. Courts have no right to pronounce a judgment, or do any other act strictly judicial, on Sunday, in the absence of a permissive statute. Bloss v. State, 75 S. W. (2d) 694; Shearman v. State, 1 Tex. App. 215. We have in this state no statute permitting the jury to be charged on Sunday. In Moss v. State, supra, the court said: 'Charging the jury is a high judicial function, and it cannot be lawfully exercised on Sunday.' We are constrained to hold that reversible error is presented."

You are respectfully advised that it is the opinion of this department that pleas of guilty accepted and judgments rendered on Sundays in misdemeanor cases are invalid.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED FEB 21, 1941  
*Gravelle Mann*  
ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*  
Wm. J. Fanning  
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WJF:GO

