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The State of Texas  
OFFICE OF THE ATTORNEY GENERAL OF TEXAS

Austin

Gerald C. Mann  
Attorney General

Honorable George W. Cox  
State Health Officer  
Austin, Texas

Dear Sir:

Opinion No. 0-3411  
Re: Correct form for complaint  
for filing charges against  
an individual for selling  
the meat of an animal that  
had died from natural cause.

This is to acknowledge your recent request for our opinion as to the sufficiency of a complaint form submitted along with your letter, and asking that we prepare a correct form in the event we found yours inappropriate.

The case of Cozine v. State, 87 Tex. Cr. R. 92, 220 S. W. 102, was one wherein the defendant was charged with the offense of selling, offering for sale and possessing for the purpose of sale an article of food consisting of meat and product of an animal that had died otherwise than by slaughter. While the Cozine case was decided in 1920, prior to the last codification of our Penal Code, the applicable statute has been brought forward without change. The Court of Criminal Appeals approved the indictment in the case. While the opinion of that court does not set out the form, we have examined the same as shown in the transcript on file in the Clerk's office. There were two counts in said indictment, the charging part of each being here copied:

First count:

"Did then and there unlawfully have in his possession with intent to sell, did then and there offer and expose for sale, and did then and there offer to sell to John Doggett an article of food consisting of meat and product of an animal unfit for food, to-wit a hog that had died otherwise than by slaughter."

Second count:

"Did then and there unlawfully have in his possession with intent to sell, and did then and there offer and expose for sale, and did then and there sell to Mrs. Delia Anthony an article of food that consisted of the meat and product of an animal unfit for food, to-wit, the meat and carcass of a hog that had died otherwise than by slaughter."

In view of the above, we have prepared and attached hereto a form of complaint we are confident will meet any attack in the appellate courts. We think the attached form preferable to the one you submit because of the approval given the indictment in the Cozine case, supra. We do not mean by this to imply absolutely that your form would not be sustained, although we observe the State would most likely have a greater burden of proof than if proceeding under the Dozine form. We also note that the kind of animal is not specified in the form you submit.

Trusting the above is satisfactory, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Benjamin Woodall  
Benjamin Woodall  
Assistant

BW:RS

ENCLOSURE

APPROVED MAY 5, 1941

/s/ Grover Sellers

FIRST ASSISTANT  
ATTORNEY GENERAL

APPROVED OPINION COMMITTEE  
By BWB Chairman

O. K.  
W.R.K.

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

BEFORE me, the undersigned authority, on this day personally appeared \_\_\_\_\_, who, after being by me duly sworn, on his oath deposes and says that he has good reason to believe and does believe that \_\_\_\_\_ in the County of \_\_\_\_\_ and State of Texas, on or about the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 194\_\_\_\_, and before the making and filing of this complaint, did then and there unlawfully have in his possession with intent to sell, and did then and there offer and expose for sale, and did then and there sell to \_\_\_\_\_, an article of food that consisted of the meat and product of an animal unfit for food, to-wit the meat of a hog that had died otherwise than by slaughter,  
Against the peace and dignity of the State.

\_\_\_\_\_

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_,  
a credible person, on this the \_\_\_\_\_ day of \_\_\_\_\_, A. D.,  
194\_\_\_\_.

\_\_\_\_\_  
County Attorney of  
\_\_\_\_\_ County, Texas.

(This form may be endorsed on the back thereof, exactly as the specimen you submit. If no actual sale made, omit the clause "and did then and there sell to \_\_\_\_\_.")

3411

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

BEFORE me, the undersigned authority, on this day personally appeared \_\_\_\_\_, who, after being by me duly sworn, on his oath deposes and says that he has good reason to believe and does believe that \_\_\_\_\_ in the County of \_\_\_\_\_ and State of Texas, on or about the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 194\_\_, and before the making and filing of this complaint, did then and there unlawfully have in his possession with intent to sell, and did then and there offer and expose for sale, and did then and there sell to \_\_\_\_\_, an article of food that consisted of the meat and product of an animal unfit for food, to-wit the meat of a hog that had died otherwise than by slaughter,

Against the peace and dignity of the State.

\_\_\_\_\_

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_, a credible person, on this the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 194\_\_.

\_\_\_\_\_  
County Attorney of  
\_\_\_\_\_ County, Texas.

(This form may be endorsed on the back thereof, exactly as the specimen you submit. If no actual sale made, omit the clause "and did then and there sell to \_\_\_\_\_.")