



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable D. W. Stakes, General Manager
Texas Prison System
Huntsville, Texas

Dear Sir:

Opinion No. 0-4675
Re: Legality of officers
and employees of Texas
Prison System selling
to or buying from the
Texas Prison System.

This will acknowledge receipt of your letter of August 8, 1942 requesting the opinion of this Department upon the following question:

"Please advise us whether or not it is lawful for members of the Prison Board, employees of the Texas Prison System, or any other employees of any State institution or department to have any private business dealings with the Texas Prison System, whether in the nature of a purchase, sale or trade."

Penal Code, Article 552 provides:

"Any officer, agent or employe in any capacity connected with the prison system who shall be financially interested either directly or indirectly in any contract for the furnishing of supplies or property to the prison system, or the purchase of property for the prison system, or who shall be financially interested in any contract to which said prison system is a party, or who shall knowingly and fraudulently sell or dispose of any property belonging to the prison system below its reasonable market value, or who shall be financially interested in any other transaction connected with the prison system shall be confined in the penitentiary not less than two nor more than five years.

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Each transaction is a separate offense."

Penal Code, Article 370 provides:

"No officer or employe of the State penitentiaries shall be permitted to purchase any goods or merchandise or other property from the State or penitentiary system, except such un- plus fruits, vegetables, ice, water, steam and lights as may be produced or manufactured on the premises of the penitentiary, or to appropriate to his private use or employment the labor, services or use of any State penitentiary convict, or of any animal, vehicle or other personal property belonging to the State, unless it be by the express consent of the penitentiary board had by an order to that effect entered of record on the minutes of said board, providing for the amount to be paid by such officer or employe, for the use, employment and services of such convict or convicts or the use of any personal property belonging to the State; and no employe or officer using any State property shall be allowed to use same in keeping boarders for profit unless such boarder or boarders be in the employ of the State penitentiary system; and no penitentiary sergeant, guard or other officer or employe of the penitentiary shall accept or receive any salary or other compensation from any person or corporation hiring or otherwise employing State convicts. Any such officer or employe who shall violate any provision of this article shall be punished by dismissal from his office or employment and by a fine of not less than twenty-five nor more than two hundred dollars and if the conviction be for accepting or receiving any salary or compensation from a hirer or employer of State convicts, the party so convicted shall, in addition to the penalty above described, be confined in jail not less than one month nor more than one year.

"Any person or any member of a co-partnership or firm, or any agent, servant or representative of such person, co-partnership or firm, or any officer, agent, servant or representative of any corporation, hiring or employing State convicts

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by contract with the State or penitentiary system of hire, lease, or for any share or portion or per cent of the crops or other products of the labor of such convicts, who shall pay or promise or offer to pay, either directly or indirectly, to any sergeant, guard or other employe of the State having such convicts in charge or under his control, either in whole or in part, in money or other valuable thing, shall be confined in the penitentiary for two years."

Under the provisions of these articles, it is an offense against the laws of this State for any officer or employe of the Texas Prison System to purchase from the Prison System any goods, merchandise, or other property, except such surplus fruits, vegetables, ice, water, steam, and lights as may be produced or manufactured on the premises of the System. It is likewise an offense for such officer or employe of the Texas Prison System to be financially interested in the sale of any property to the Prison System. A trade is simply another form of sale, and is forbidden under the Statutes.

It is also an offense for any officer or employe of the System to appropriate to his private use any animal, vehicle, or other personal property belonging to the System, unless the Prison Board shall enter an order on its minutes expressly permitting such use of prison property and fixing the amount to be paid by the officer or employe for the use of such personal property.

We find no statute prohibiting officers or employes of the State, other than officers and employes of the Prison System itself, from selling to or purchasing from the Prison System. In this connection, however, your attention is directed to that portion of Article 558 which makes it an offense for the officers, agents, or employes of the Prison System to knowingly and fraudulently sell or dispose of any property belonging to the Prison System below its reasonable market value.

We call your attention likewise to the provisions of Penal Code, Article 154B, bearing upon the general subject matter of the private use of prison property by officers and employes of the Prison System. This article provides:

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"Any officer or employee of the Prison System who shall fraudulently convert to his own use and benefit any food, clothing, or other property belonging to or under the control of the Prison System, shall be punished as if he had stolen the same."

We trust that the foregoing answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *R. W. Fairchild*
R. W. Fairchild
Assistant

HNF:hw

APPROVED AUG 15, 1942
Gerard C. Mann
ATTORNEY GENERAL OF TEXAS

