



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN

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ATTORNEY GENERAL

Honorable Paul T. Holt
County Attorney
Travis County
Austin, Texas

Attention: Wm. Yelderman

Dear Sir:

Opinion No. 0-5642
Re: Construction of Chapter 370,
page 651, Acts of 1943, now
Article 1661, 1, Vernon's Revised
Civil Statutes.

This will acknowledge receipt of your letter of recent date requesting the opinion of this department as to the proper construction to be placed upon the above designated chapter enacted by the 48th Legislature. We quote in part from your letter as follows:

"Conditions existing in this County, particularly in the City of Austin, make it necessary to construe the Act of 1943, 48th Legislature, p. 651, Chapter 370, now Art. 1661.1, Pocket Parts, Vernons Revised Statutes, 1943.

"The Act seems to me to be indefinite and uncertain in several respects, among others, are these:

"1. The Act provides that the owners, etc., of motor buses 'shall provide and require that all white persons boarding their buses for transportation or passage shall take seats in the forward or front end of the bus, filling the buses from the front end, and that all negro passengers boarding the bus for transportation or passage shall take seats in the back or rear end of the bus, filling the bus from the back or rear end.'

"Does the words 'filling the bus' mean filling the seats only or filling the seats and standing room in the aisles as well.

"2. Assume that all seats in the bus are filled by one race before any of the other race enters the bus, has the operator of the bus the legal authority to require any of the race so seated to vacate their seats to make room for members of the other race entering the bus after all the seats were occupied.

"3. Assume that all seats in the bus are occupied as stated in '2' above by negroes, and there is nothing but standing room left, and white passengers enter, can they lawfully take their places in the rear of the bus or are they required to begin standing in the front end of the aisle?

"4. Assume the bus was filled with white passengers beginning at the front and negro passengers beginning at the rear of the bus, and negro passengers leave the bus while white passengers are standing, can the operator lawfully require negro passengers immediately behind the whites to take the vacated seats and make room for the standing white passengers, and in case white passengers leave the car and leave colored passengers standing, could the operator lawfully require white passengers immediately in front of the negro passengers to get up and occupy the vacated seats and make room for the standing negro passengers?

"5. Assume the bus were filling up with white or negro passengers at a point where passengers of the other race always boarded the bus or were standing off waiting to enter, could the operator lawfully require the race filling the bus to leave seats for the other race in its proper end of the bus? In other words, would the operator have the legal right to require the race entering the car to reserve seats for the race expected or waiting to enter.

"6. Has the operator of a bus the legal right to require either race to reserve or leave seats for the others in its proper end of the car?

"7. In instances where sufficient numbers of one or the other race has boarded the buses and occupied all seating space, and then persons of the opposite race began boarding the bus, has the operator of the bus the legal authority to require seated passengers of either race to relinquish seats, and move backward or forward, filling standing and seating room in their end of the bus in order that the races might be kept separated, or should the seated passengers be permitted to retain their seats, and boarding passengers forced to stand in the aisles between seated persons of the opposite race?

"8. Under the provisions of the Act, has a transportation company the legal authority to make provision for the reservation, when needed, of one or more seats for negroes, at the rear of the bus, and, when needed, one or more seats at the front of the bus for white persons?

"9. Where capacity of seat is greater than necessary to reserve for either race, can space on seat be separated by bar or marker, to provide for seating of both races on same seat?

"10. Where more than one seat of two or more capacity is occupied by a member of the same race, can they be required to seat themselves together in order to provide more seats for the opposite race?

"11. If the Act under consideration is inoperative and void, for any reason, has the City Council of the City of Austin the legal authority to pass an Ordinance providing for separate space in buses for the white and colored races?

"12. Has the City Council the authority to pass an Ordinance authorizing the operator of a bus to reserve seats for the colored people in the rear and seats for the white people in the front of the bus?

"13. Is the Act under consideration valid and constitutional or is it void for uncertainty?

". . . ."

Article 1661.1, Vernon's Revised Civil Statutes, in part, provides:

"Section 1. Separation of Races in Motor Buses.

"That every transportation company, lessee, manager, receiver and owner thereof, operating motor buses in this State as a carrier of passengers for hire shall provide and require that all White passengers boarding their buses for transportation or passage shall take seats in the forward or front end of the bus, filling the bus from the front end and that all Negro passengers boarding their buses for transportation or passage shall take seats in the back or rear end of bus, filling the bus from the back or rear end."

". . . ."

"Sec. 3. Authority of Bus Operator.

"The operators of all passenger motor buses in this State shall have authority to refuse any passenger or person the right to sit or stand in any motor bus unless such passenger or person shall comply with the provisions of this Act, and such operator shall have the right and it shall be his duty to call any peace officer of the State of Texas for the purpose

of removing from any bus any passenger who does not comply with the provisions of this Act, and any such peace officer shall have the right and it shall be his duty to remove from said bus, and to arrest any such passenger so violating this Act, the same as if such person were committing a breach of the peace in the presence of such officer.'

"Sec. 4. Penalty.

"'If any passenger upon any bus in this State shall ride or attempt to ride on said bus in a place prohibited under the provisions of this Act, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Five Dollars (\$5) nor more than Twenty-five Dollars (\$25).'

". . . ."

We will render our opinion upon your submitted queries by a general discussion in lieu of specific examination of each particular question and thus prevent undue repetition of our views and the reasons in support thereof.

Article 1661.1, supra, was presumably passed by the recent Legislature in the spirit in which previous legislation with reference to segregation of races by carriers has been enacted. The subject matter of the Act under discussion is nothing new in legislation; in Texas there has been such a statute, commonly called "Separate Coach Law," in effect since 1891 dealing with carriers which operate upon rails. See Article 6417, Vernon's Revised Civil Statutes and Article 1659, Penal Code. The purpose for such legislation, as revealed by the emergency clause of the bill under consideration, is very aptly stated by the court in the case of Westchester & Philadelphia R. Co. v. Miles, 55 Pa. 209, 93 Am. Dec. 744;

". . . It is not an unreasonable regulation to seat passengers so as to preserve order and decorum and to prevent contacts and collision arising from natural or well-known customary repugnances, which are likely to breed disturbances by promiscuous sitting. It is much easier to prevent difficulty among passengers by regulation for their proper separation than it is to quell them. The danger to the peace engendered by a feeling of aversion between individuals of the different races cannot be denied. It is the fact with which the company must deal. If a negro takes a seat beside a white man, or his wife or daughter, the law cannot repress the anger or conquer the aversion which some will feel. However unwise it may be to indulge the feeling, human infirmity is not always proof against it. It is much wiser to avert the consequences of this repulsion of race by separation than to punish afterwards the breach of the peace it may have caused."

The principle followed by the Federal and State courts as to whether or not segregation of races contravene any constitutional provision is not the identity of the accomodation but rather the equality of the accomodation. Hall v. De Cuir, 95 U. S. 505, 24 L. Ed. 547; Plessy v. Ferguson, 163 U. S. 537, 16 Sup. Ct. 1138, 41 L. Ed. 256; Texas & P. Ry. Co. v. Baker, 215 S. W. 556 (Com. App.); Chiles v. Chesapeake & O. Ry. Co., 101 S. W. 386 (Ky). By this, we mean the test is not whether a race or a portion of a race is separated from other races or groups thereof, but whether the accomodations offered each race or portion are reasonably equal in every respect and no undue discrimination is present. We are of the opinion Article 1661.1, supra, causes no undue discrimination between the races. The law was enacted for the protection of passengers, white and negro alike; the separation will prevent conditions most likely to provoke unlawful acts and thus ward off for both races pains of the nature of physical suffering and pains of the nature of fines. The accomodations offered both races are equal in every respect; the comforts and conveniences provided are the same not withstanding race or color.

It is quite evident from reading Section 1 of Article 1661.1, supra, that the white and negro passengers should be separated; the former being placed at the front end of the bus and the latter placed at the rear, and keeping with- in the spirit of the law, the races should be separated whether sitting or standing.

The Legislature in enacting this bill saw fit to provide a penalty only for failure of the passengers who violate the provisions of the Act. There are no provisions for a definite space allotment to the different races or penalties prescribed if the carrier or operator fail to abide by the provisions of the Act as is provided in the Separate Coach Law. Possibly the Legislature deemed it unwise and impracticable to allot specific space to each race considering the elasticity of the number of each race riding at different periods of time. We believe these facts are relevant and important however in construing this Act. It appears the Legislature is allowing the operator to use his discretion in placing the parties on the bus with the general instructions as to the proper segregation. In other words, the manner and method of separating the races are within the discretion of the operator of the bus; the seating and standing of each person will naturally depend upon each circumstance and as long as the operator does not abuse this discretion and follows the spirit of the law, he possesses the authority to instruct any person where to stand or sit on the bus. If the passenger does not abide by these reasonable instructions, the remedies of the operator are set out in Section 3 of the Act.

In the absence of specific provisions as to the allotment of space, we are of the opinion the foregoing is the only reasonable construction that can be placed upon the Act as to the placing of the passengers; that is, it is with-in the discretion of the operator and as long as he carries forth the spirit of the law, he has the privilege to reserve places and seat the passengers as he deems best for the occasion.

Very truly yours

ATTORNEY GENERAL OF TEXAS

s/ Robert O. Koch

By

Robert O. Koch
Assistant

ROK:DB/law

APPROVED OCT. 20, 1943
s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY B. W. B.
CHAIRMAN