



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Syrian E. Marbut
County Attorney
Lubbock County,
Lubbock, Texas

Dear Sir:

Opinion No. 0-7242

Re: Exemption of certain counties from the provisions of Article 1482, Penal Code, requiring purchases of any animal or hides of cattle to obtain bill of sale from the owner or his agent.

Your request for an opinion as to whether buyers of animals and hides in the counties enumerated in Article 7005, Revised Civil Statutes, are exempt from securing a bill of sale from the vendor of animals and hides at the time of purchase, as required by Article 1482 of the Penal Code, has been received by this office.

Article 1482 of the Penal Code, 1925, reads as follows:

"Whoever purchases any animal or hides of cattle without obtaining a bill of sale from the owner or his agent shall be fined not less than twenty nor more than one hundred dollars for each animal or hide so purchased."

Chapter 7, Title 121, R. C. S., embraces Articles 6972-7007. Articles 6983 and 6984 read respectively as follows:

Art. 6983.

"Each person who shall buy or drive any animal or animals for sale or shipment out of any county, or who shall buy or drive the same for slaughter, shall at the time of purchasing and before driving the same, procure a written bill of sale from the owner or owners therefrom, or from his or their

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legally authorized agent. Said bill of sale shall be properly signed and acknowledged. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all marks and brands discernible thereon; and said animals before leaving the county in which they have been gathered shall be inspected by the inspector of such county or his deputy."

Art. 6984.

"The purchaser of any hides of cattle at the time of purchasing same shall obtain from the owner thereof, or from his legally authorized agent, a written bill of sale duly acknowledged, which shall recite in full the marks and brands of each hide, the weight thereof, and whether the same is dry or green."

Article 6983 requires the purchaser of any animal to obtain from the owner thereof, or his agent, a written bill of sale in the manner and form therein prescribed. Article 6984 requires the purchaser of any hides of cattle at the time of purchase to obtain from the owner thereof, or his agent, a written bill of sale in the manner and form therein prescribed.

It is apparent that Article 1482, P. C., is the counterpart of Articles 6983 and 6984 and makes it an offense for the purchaser of any animal or hides of cattle to so purchase without obtaining from the owner thereof or his agent a bill of sale thereto.

Article 7005, R. C. S., after naming a long list of counties, concludes by specifically exempting the counties named "from the provisions of this chapter, and from all laws regulating the inspection of hides and animals."

Article 1482, P. C., is found in chapter 13, Title 17, of the Penal Code, which chapter includes Articles 1471-1488. The last mentioned article is as follows:

"The counties exempted from the laws regulating the inspection of hides and animals are those as are or may be exempted by statute."

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The only Article that specifically names certain counties and exempts them "from all laws regulating the inspection of hides and animals" is Article 7005.

We are therefore forced to the inevitable conclusion that those counties named in Article 7005 are also exempted from all the articles found in Chapter 13, Title 17, of the Penal Code, which includes Article 1482.

The correctness of the above conclusion is indubitably sustained by the legislative history of the original Act of the Legislature from which Chapter 7, Title 121, R. O. S., 1925, and Chapter 13, Title 17, of the Penal Code, were derived.

In 1876, the Fifteenth Legislature passed an Act (Ch. 165, p. 295) entitled "An Act to encourage stock-raising and for the protection of stock-raisers." This was the first session of the legislature after the adoption of the Constitution of 1876 and the above mentioned Act was an enabling Act to put into effect the provisions of Section 23, Art. XVI, of the new Constitution. It created the office of Inspector of Hides and Animals in each organized county of the State; prescribed his powers and duties; fixed his compensation; imposed duties upon stock raisers; the sellers and buyers of animals and hides; defined numerous offenses and prescribed penalties for the violation thereof. It was a comprehensive Act designed to cover the purposes stated in its title, quoted above.

Sections 11, 12 and 39 of said Act read respectively as follows:

Section 11.

"Every person who shall buy or drive any animal or animals for sale or shipment, out of any county in this State, or who shall buy or drive any animal or animals for slaughter, shall at the time of purchasing and before driving the same, procure a bill of sale from the owner or owners thereof, or from his or their legally authorized agent, which bill of sale shall be in writing, properly signed and acknowledged before some officer authorized to authenticate instruments for record in this State. Such bill of sale shall distinctly enumerate the number kind and age of animals sold, together with all the marks and brands discernible on said animals; said animals shall, before leaving the county in which they have been gathered be inspected by the Inspector of such county or his deputy."

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Section 12.

"Every person who shall purchase any hides of cattle shall, at the time of purchasing the same, obtain from the owner thereof, or from his legally authorized agent, a bill of sale in writing certified to by the Inspector or by any officer authorized to take acknowledgments, which bill of sale shall recite in full the marks and brands of each hide, the weight thereof and whether the same is dry or green."

Section 39.

"Any person who shall purchase any animal or hides of cattle without obtaining a bill of sale from the owner or his agent, as required by sections eleven and twelve of this Act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than twenty dollars nor more than one hundred dollars for each animal or hide so purchased."

Section 46 of said Act, after naming approximately sixty-five counties, specifically exempted them "from the operation of this Act."

The above mentioned Act was brought forward in the Revised Statutes of 1879. Those sections defining offenses and prescribing penalties for the violation thereof were incorporated in Chapter Fifteen, Title XVII, of the Penal Code, which chapter contained Articles 772-785. The other sections of said Act were brought forward in the Civil Statutes and incorporated in Chapter Five, Title XCIII, which chapter contained Articles 4611-4659.

Sections 11 and 12 became Articles 4628 and 4629 respectively of the Civil Statutes. Section 39 became Article 779 of the Penal Code and Section 46 was brought forward in the Civil Statutes as Article 4659 and as Article 785 of the Penal Code. The counties named and exempted from the operation of the respective chapters in which Articles 4659 and Article 785 appeared were identical.

The arrangement of the Act of 1876 by the codifiers of the Statutes of 1879 has been consistently followed in all subsequent codifications of our statutes, both civil and criminal. Chapter 15, Title 17, of the Penal Code of 1879 is included in

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Chapter 13, Title 17, Penal Code 1925, which contains Art. 1482 and 1483. Chapter 5, Title 93, of the Revised Civil Statutes of 1879 is now included in Chapter 7, Title 121 of the Revised Civil Statutes, 1925, which contains Articles 1983 6984 and 7005.

Since Section 45 of the original Act of 1876 exempted all counties therein named "from the operation of the Act", it exempted them from the criminal provisions as well as the civil provisions thereof. Therefore, the codifiers of the Statutes of 1879 made it perfectly clear that the counties exempted from the provisions of the entire Act were those exempted by Article 4659 of the Civil Statutes or Article 785 of the Penal Code.

As heretofore stated, you are advised that those counties exempted by Article 7005, as amended in 1945, are exempted "from all laws regulating the inspection of hides and animals", including Chapter 13, Title 17, Penal Code, which includes Article 1482.

You have directed our attention to Article 1445, P.C., reading as follows:

"Upon the trial of any person charged with the theft of any animal of the horse, ass or cattle species, the possession of such stolen animal by the accused, without a written transfer or bill of sale containing a specific description of such animal, shall be prima facie evidence against the accused that such possession was illegal."

The above Article was enacted in 1866 and is found in Chapter 11, Title 17, of the Penal Code, and has no bearing whatever upon the question here considered. This Article does no more than manifest an effort by the Legislature to exercise the legitimate function of making a change in the rules governing the burden of proof. Reed v. State, 22 S. W. (2d) 684.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *James Anderson, Jr.*
James Anderson, Jr.,
Assistant

JA:zd

APPROVED
CONJUNCTION
COMMITTEE

BY *Blair*

APPROVED SEP 20 1946
[Signature]
JAMES ANDERSON, JR.
ASSISTANT ATTORNEY GENERAL