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October 9, 1997

The Honorable Dan Morales  
Attorney General, State of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

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Opinion Committee

Dear General Morales:

We request your opinion whether Section 497.010, Government Code, applies to the vocational shop projects of youth in Texas Youth Commission institutions.

HB 2324, passed by the 75th legislature, includes a provision that adds a new section to the enabling act of the Texas Department of Criminal Justice (TDCJ). The new section (Sec. 497.010, Government Code) recodifies and expands a prior law (Art. 9007, V.T.C.S.) related to the offense of selling prisoner-produced goods within the state. It generally tracks the language of a federal law that prohibits the transport of prisoner-produced goods in interstate commerce, Sec. 1761(c), Title 18, U.S.C. The new state law makes it an offense (Class B Misdemeanor) to sell or offer to sell on the open market in this state an article or product (including a service) that is manufactured in whole or in part by a TDCJ inmate or "an inmate in any correctional facility or reformatory institution."

Since the prior law used the term "convicts or prisoners" instead of "inmate", it was never interpreted to apply to items built by youth in the Texas Youth Commission (TYC), even though the prior law also included the term "reformatory institutions." The Family Code expressly provides that, except for the use of determinate sentence offenses for enhancement of criminal penalties in certain circumstances, a juvenile court disposition "is not a conviction of crime, and does not impose any civil disability ordinarily resulting from a conviction" [Sec. 51.13(a), Family Code]. The first question, then, is whether by substituting the term "inmate" the legislature intended to make Sec. 497.010 apply to the products and services of TYC youth or whether it simply intended to recodify the prior law without expanding its application to TYC. The fact that the section was moved to the TDCJ enabling act from the more general statutes related to business regulation would seem to indicate that the legislature intended the latter.

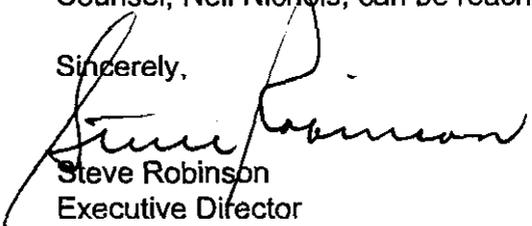
If your answer to the first question is that the new section does apply to the products and services of TYC youth, the second question is whether, by using the term "manufactured" to describe the articles and products, the legislature intended to exclude youth's vocational shop projects from the section's prohibition.

We have distinguished vocational shop projects from goods that are manufactured by youth who are employed in industries programs on our campuses [Chapter 61, Subchapter I, Human Resources Code]. Articles manufactured in the industries program are produced for the purpose of marketing them to the general public. Items built in vocational shops, on the other hand, are made primarily for the purpose of acquiring vocational skills. These shops are no different than the vocational shops the youth would be attending in their local public schools had they not been committed to TYC. In vocational shops, youth are not engaged in the "manufacture" of goods as much as they are engaged in learning by practice.

Historically, vocational shops on our campuses, such as wood and metal-working, auto body repair, small engine repair, horticulture, and the like, have sold youth projects for the cost of parts, tools and other supplies and for some incentive compensation for the participating youth. The TYC enabling act includes a provision establishing a vocational shop fund for this very purpose (Sec. 61.0431, Human Resources Code). Volunteer Councils at several institutions have sometimes helped sell vocational shop projects as fund-raisers for the youth. None of these sales activities has been of a scale that could affect private business enterprises off the campus.

We appreciate your opinion on this important matter, General Morales. Please let us know if we can be of further assistance to you in your consideration of it. Our General Counsel, Neil Nichols, can be reached at 512-424-6241.

Sincerely,



Steve Robinson  
Executive Director