OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable John E. Taylor
Chief Supervisor
Railroad Commission of Texas
Austin, Texas

Dear Sir:

Opinion No. O-956
Re: Necessity of publication of certain orders of the Railroad Commission before a criminal prosecution can be maintained for their violation.

We have your letter of June 9, 1939, with three exhibits attached referred to therein as Exhibit "A", Exhibit "B", and Exhibit "C".

Exhibit "A" is a copy of a statewide order of the Railroad Commission of Texas fixing the allowable production of crude oil in the various oil fields and districts of Texas.

Exhibit "B" is a copy of a proration schedule of the Commission fixing the allowables of the individual wells located on the leases therein shown, in the particular oil fields designated and described in the statewide order.

Exhibit "C" is a copy of an order of the Commission putting into effect the proration schedule above referred to.

You request our opinion in reference to the above mentioned exhibits, upon the following questions:

> "1. Is it necessary to publish each of the Orders and Schedules hereinbefore referred to; namely, "Exhibit A," "Exhibit B," and "Exhibit C," being the Statewide Order, Proration Schedule and the Order putting the schedules into effect, in order to en-

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force the Penal provisions of the statute which prohibit the production of oil from a well in excess of the amount of production allotted to the well under the Orders referred to immediately above?

"2. Should it be held that the publication of either the Orders or Schedules is not necessary for the purpose mentioned in Question No. 1, then please advise which of same fall within that category."

In order to avoid confusion, we will state at the outset that the proration schedule referred to as Exhibit "B" in your letter is referred to as Exhibit "A" in the order putting said schedule into effect, said order being referred to as Exhibit "C" in your letter.

Our examination of the three exhibits submitted in your letter brings us to the conclusion that Exhibit "A", being the statewide proration order, is a self executing order, that Exhibit "B", referred to as Exhibit "A" in your Exhibit "C", is a proration schedule not self executing, and that Exhibit "C" is an order putting Exhibit "B" into force and effect.

Having reached this conclusion it is our opinion that each of the foregoing orders and schedules are necessary to put into effect the allowables of the oil fields of the State of Texas, and the individual wells located on the leases therein.

We will now take up the statutes pertinent to your inquiry.

Article 1118b, Section 7a, Vernon's Annotated Penal Code, provides as follows:

"Sec. 7a. It shall be unlawful for any person, as defined in this Act, owning, leasing, operating, producing, or controlling any oil property or oil well within this State to produce or cause to be produced on any day from any such oil property or oil well any oil in excess of the amount allowed to be produced per day from any such oil property or oil

well under any order or orders of the Governmental Agency, theretofore promulgated and in force at the time."

Article 1112b, Section 8a, Vernon's Annotated Penal Code, provides as follows:

"Sec. 8a. Whenever the Governmental Agency shall have adopted any rule or regulation under the power conferred by this Act, such Governmental Agency shall publish in three (3) newspapers of general circulation in the State of Texas (such newspapers to be selected by said Governmental Agency), once each day for three (3) consecutive days a complete copy of such rule and regulation and on and after the 7th calendar day after the date of the last publication, such rule, regulation or order shall become effective and enforceable. Notice of any amendment, repeal, alteration or modification of such order may be similarly promulgated and will become similarly effective after similar notice."

Article 1112b, Section 9, Vernon's Annotated Penal Code, provides as follows:

"Sec. 9. Any person who shall violate any of the provisions of Section 5, 5a or 5b of this Act, or any person who shall fail to comply with any of the provisions of said Sections of this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not exceeding Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. Any person who shall violate any other of the provisions of this Act, or any person who shall fail to comply with either of the other terms of this Act, or any person who shall fail to comply with the terms of any rule, regulation or order adopted and promulgated by the Governmental Agency under the

terms of this Act, or any person who shall violate either of the rules, regulations or orders of such Governmental Agency adopted under the provisions of this Act, shall upon conviction be deemed guilty of a felony, and upon conviction shall be punished by confinement in the State Penitentiary for a term of not less than two (2) nor more than four (4) years."

Article 6066a, Section 5, Vernon's Annotated Civil Statutes, provides as follows:

"Sec. 5. Whenver the Commission shall have adopted, after notice and hearing as provided under other statutes of the State, any rule, regulation or order pursuant to any statute of this State, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commission shall have promulgated such rule, regulation or order by publishing a complete copy of same in three (3) newspapers of general circulation in the State of Texas (such newspapers to be selected by said Commission) once each day for three (3) consecutive days, and on and after the seventh (7th) day after the date of the last publication such rule, regulation or order shall be effective and enforceable in any criminal action, brought pursuant to this Act. No criminal action shall be maintained against any person involving the violation of any provisions of any amendment or modification of any order of the Commission until the Commission shall have promulgated such amendment or modification after its adoption by publishing a complete copy of such amended or modified rule, regulation or order in three (3) newspapers of general circulation once each day for three (3) consecutive days, and, on and after the seventh (7th) calendar day of the last publication, such

amendment or modification of such rule, regulation or order shall become effective and enforceable in any criminal action brought pursuant to this Act. However, the absence of promulgation by publication as herein provided shall not affect the enforcement of any order of the Commission in any civil or quasi civil action brought pursuant to this Act or to any statute of this State."

From a perusal of the foregoing statutes it is clear that both Section 8a of Article 1112b, Vernon's Annotated Criminal Statutes, and Section 5 of Article 6066a, Vernon's Annotated Civil Statutes, makes a publication of the rules, regulations and orders of the Commission as provided for in said statutes mandatory before a criminal prosecution can be maintained for their violation.

This being true, it is apparent that our answer to your first question is that it is necessary to publish each of the orders and schedules referred to in your letter as Exhibit "A", Exhibit "B", and Exhibit "C" in order to maintain a criminal prosecution for production of oil from a well or wells in excess of the amount alloted to the well or wells under the orders and schedules above referred to.

Our answer to your first question removes the necessity for answering your second question.

For a judicial construction of Article 6066a, Section 5, Vernon's Annotated Civil Statutes, see Carter vs. State, 116 S.W. (2d) 371.

Trusting that the above satisfactorily answers your questions, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By E. R. Simmons
E. R. Simmons
Assistant

Approved
James P. Hart

APPROVED SEP 20, 1939
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

ERS:FG

APPROVED
OPINION
COMMITTEE
BY BWB