



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. W. K. McClain
Criminal District Attorney
Williamson County
Georgetown, Texas

Dear Sir:

Opinion No. 0-2022

Re: (1) Is it necessary under the laws of the state of Texas for a public cotton classer to first obtain a license to classify cotton from the Federal Government?

(2) Is it necessary for a person who has received Federal license to file a bond with the Commissioner of Agriculture to be approved by him in the sum of \$1000; and in this connection, is it necessary for him to pay to the Commissioner the \$5.00 fee to be registered as a Public Cotton Classer?

This will acknowledge receipt of your letter of February 29, 1940 requesting an opinion of this department on the above stated questions.

Article 5679a, Vernon's Civil Annotated Statutes, reads as follows:

"Sec. 1. Defining cotton classers. All persons in this State, who shall hereafter grade cotton for the public, or who shall hereafter issue or cause to be issued, a receipt or ticket for cotton, and place on said ticket the grade of said cotton, which said ticket is intended for the use of the public in buying and selling said cotton, shall be known as Public Cotton Classers and before

entering upon such duties, shall comply with the provisions of this Act. After complying with said provisions, such Classers shall be known as Registered Public Cotton Classers. Classers as herein referred to shall include every person, or persons who shall grade or staple cotton.

"Sec. 2. Qualifications. All Public Cotton Classers shall furnish evidence of their good moral character, and, as evidence of their qualifications as Cotton Classers, they shall be required to obtain from the Secretary of Agriculture of the United States, a license to grade or staple cotton and to certify the grade and staple thereof in accordance with the official cotton standards of the United States Cotton Standards Act, and file with the Commissioner of Agriculture of this State, hereafter called the 'Commissioner' a duplicate thereof.

"Sec. 3. Bond. Before any such licensee shall issue a certificate of classification in this State, except as provided in United States Cotton Standards Act, he shall file a bond with the Commissioner to be approved by him, in the sum of One Thousand (\$1,000.00) Dollars, which bond shall be so conditioned as to bind its maker and his sureties to guarantee as approximately correct, his work in classing and stapling cotton. It shall also bind the maker and his sureties to promptly indemnify any person who may sustain financial loss by reason of any false class or staple he may make or by reason of any untrue or misleading certificate issued by him or under his authority, with intent to defraud. Such bonds shall be payable to the State of Texas for the use and benefit of any person or persons who may be damaged by the breach of its conditions, but it shall not be necessary to join the State in any suit on any such bond, the venue of such suit on any such bond shall be that of the general venue by suit or otherwise, the Commissioner may, by

written notice to the maker, require such impairments to be made good. If any such impairment is not made good, to the satisfaction of the Commissioner, within a reasonable time after notice, which time shall in no event, exceed thirty (30) days, such bond shall become null and void.

"Sec. 4. Each Public Cotton Classifier in this State shall keep a complete record of cotton classed and for whom classed, in a well bound book, and shall issue a certificate to each person showing the class and other grade of the cotton classed by him. He shall also keep on hand, a set of the United States Standards of grades and staples and his books, records and standards shall be open to inspection of the public at all reasonable hours.

"Sec. 5. Form of receipts and records. It shall be the duty of the Commissioner to prescribe all forms of receipts, certificates and records of whatever description necessary, but all such receipts, certificates and forms shall be drawn in compliance with this Act. He shall prescribe such rules and regulations as he shall deem proper, not in conflict with any provisions hereof. The Commissioner shall have power and authority and it shall be his duty to enforce the provisions of this Act.

"Sec. 6. Fees. Before any Public Cotton Classifier is registered under this Law, he shall pay over to the Commissioner a fee of Five (\$5.00) Dollars, said fee shall be paid annually along with the renewal of his said bond, such fee to be deposited in the State Treasury to the credit of the general revenue.

"Sec. 7. Right. All Registered Public Cotton Classers shall have the right, at any time within this State, to engage in the business of Public Cotton Classers and shall be authorized to class and staple cotton generally, and to charge for their services. A certificate

of classification of cotton issued by any person or persons under authority of this Act, shall be accepted in all the courts of this State, as prima facie evidence of the facts stated therein.

"Sec. 8. Rights to class own cotton. This Act shall not affect the right of anyone to class his own cotton or of any cotton buyer or other person to class cotton purchased by him for himself, or purchased for another, but applies to all other persons who engage in the business of classing cotton for the public or of issuing receipts and tickets therefor with the grade thereon, for the use of the public, as herein above provided.

"Sec. 11. Collections and appropriations. All moneys so collected shall be paid over by the Commissioner to the State Treasurer and shall be placed in the General Fund of the State."

The penalty provided for the failure to comply with Article 5679a, supra, is found in the Penal Code as Article 1027a which reads, in part, as follows:

"Hereafter no person shall be permitted to engage in the business as Public Cotton Classifier, classing and stapling cotton for the public, or issuing receipts and tickets therefor, with the grade thereon, for the use of the public, as herein above provided, without complying with the provisions of this Act. Any one violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine in any sum not less than Twenty-Five (\$25.00) Dollars, and not more than Two Hundred (\$200.00) Dollars.

" . . . "

Sections 51a, 51b, 53 and 60 of the Cotton Standard Act, ch. 2, title 7, U.S.C.A., read as follows:

"§ 51a. EXTENSION OF CLASSIFICATION FACILITIES
TO COTTON GROWERS

The Secretary of Agriculture is requested to extend to cotton growers facilities for the classification of cotton authorized in this chapter, with such supervision of licensed classifiers as he shall deem necessary under authority of chapter 14 of Title 26."

"§ 51b. LICENSING SAMPLERS; REVOCATION AND SUS-
PENSION OF LICENSE

Further to carry out the purposes of this chapter the Secretary of Agriculture is authorized to issue to any qualified person, upon presentation of satisfactory evidence of competency, a license to sample cotton. Any such license may be suspended or revoked by the Secretary of Agriculture whenever he is satisfied that such licensee is incompetent or has knowingly or carelessly sampled cotton improperly, or has violated any provision of said chapter or the regulations thereunder so far as the same may relate to him, or has used his license, or allowed it to be used, for any improper purpose. The Secretary of Agriculture may prescribe by regulation the conditions under which licenses may be issued hereunder, and may require any licensed sampler to give bond for the faithful performance of his duties and for the protection of persons affected thereby and may prescribe the conditions under which cotton shall be sampled by licensed samplers for the purpose of classification by officers of the Department of Agriculture, or by licensed cotton classifiers."

"§ 53. LICENSING CLASSIFIERS; REVOCATION AND SUS-
PENSION OF LICENSE

The Secretary of Agriculture may, upon presentation of satisfactory evidence of competency, issue to any person a license to grade or otherwise classify cotton and to certificate the grade or other class thereof in accordance with the official cotton standards of the United States. Any such license may be suspended or revoked by the Secretary of Agriculture whenever he is satisfied, after reasonable opportunity afforded to the licensee for a hearing, that such licensee is incompetent or has knowingly or carelessly classified cotton improperly, or has violated any provision of this chapter or the regulations thereunder so far as the same may relate to him, or has used his license or allowed it to be used for any improper purpose. Pending

investigation the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without a hearing."

"§ 60. PENALTIES FOR VIOLATION

(a) Any person who shall knowingly violate any provision of sections 52 or 59 of this chapter, or (b) any person licensed under this chapter who, for the purposes of or in connection with any transaction or shipment in commerce, shall knowingly classify cotton improperly, or shall knowingly falsify or forge any certificate of classification, or shall accept money or other consideration, either directly or indirectly, for any neglect or improper performance of duty as such licensee, or (c) any person who shall knowingly influence improperly or attempt to influence improperly any person licensed under this chapter in the performance of his duties as such licensee relating to any transaction or shipment in commerce, or (d) any person who shall forcibly assault, resist, impede, or interfere with or influence improperly or attempt to influence improperly any person employed under this chapter in the performance of his duties, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be fined not exceeding \$1,000, or imprisoned not exceeding six months, or both, in the discretion of the court."

The penalty set out in § 60, supra, applies to violation under the Federal Cotton Standard Act and has no application to offenses committed under the State Act regulating public cotton classers. Likewise, the penalty provided for the failure to comply with Article 5679a, supra, does not apply to offenses committed under the Federal Cotton Standards Act, but applies only to offenses committed under the State Act.

Section 2 of Article 5679a, supra, specifically provides:

"All Public Cotton Classers shall furnish evidence of their good moral character, and, as evidence of their qualifications as Cotton Classers, they shall be required to obtain from the Secretary of Agriculture of the United States, a license to grade or staple cotton and to certify the grade and staple thereof in accordance with the official cotton standards of the United States Cotton Standards Act, . . .,"

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therefore, your first question is respectfully answered in the affirmative.

Section 3 of Article 5679a, supra, specifically provides:

"Before any such licensee shall issue a certificate of classification in this State, except as provided in United States Cotton Standards Act, he shall file a bond with the Commissioner to be approved by him, in the sum of One Thousand (\$1,000.00) Dollars, . . . "

Section 6 of the above mentioned Act specifically provides, that:

"Before any Public Cotton Classifier is registered under this Law, he shall pay over to the Commissioner a fee of Five (\$5.00) Dollars, said fee shall be paid annually along with the renewal of his said bond, such fee to be deposited in the State Treasury to the credit of the general revenue."

In view of the foregoing statutes you are respectfully advised that it is the opinion of this department that your second question should be answered in the affirmative and is so answered.

Trusting that we have adequately answered your inquiries, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (S) Ardell Williams
Ardell Williams
Assistant

AW:ob

APPROVED MAR 9, 1940
(S) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
Opinion Committee
By BWB
Chairman