



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Charles H. Theobald
County Attorney
Galveston County
Galveston, Texas

Dear Sir:

Opinion No. O-3060

Re: A barber who conscientiously believes that the seventh day or any other day of the week ought to be observed as the Sabbath and who actually refrains from business and labor on that day for religious reasons may operate his shop on Sunday.

May we thank you for your very competent brief submitted in connection with this question. Further we believe that the conclusions you suggest in your letter are correct. In your request you ask the following questions:

"A question has arisen as to whether a barber, who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons, may operate his shop on Sundays. This particular barber claims that he is a member of a religious organization known as Seventh Day Adventists and that, according to the tenets of his religion, their Sabbath begins at sundown on Friday and continues until sundown on Saturday. This man operates a one-man barber shop, that is, he has no employees and personally attends to all of his customers."

Article 283, Penal Code of Texas, entitled "Working on Sunday," reads as follows:

"Any person who shall labor, or compel, force or oblige his employes, workmen, or apprentices to

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labor on Sunday, or any person who shall hunt game of any kind whatsoever on Sunday within one-half mile of any church, school house, or private residence, shall be fined not less than ten nor more than fifty dollars."

The courts of Texas have held that the vocation of barbering is such labor as to come under the provisions of the preceding article. See Ex Parte Kennedy, 42 Tex. Cr. Rep. 148; 58 S.W. 129.

Both the Constitution of the United States and Texas include provisions protecting the individual in regard to his thought and actions toward his God. In line with the American idea of religious tolerance and freedom of thought, the Legislature of the State of Texas injected into our law the following exceptions to Article 283, supra:

" . . . nor to any persons who conscientiously believe that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons." Article 284, Penal Code of Texas.

You do not state, although you imply, that the barber in question actually observes another day than Sunday as his Sabbath. Since it is necessary in arriving at a proper answer to determine this fact, we will assume that the barber "conscientiously believes that the seventh day of the week ought to be observed as the Sabbath," and he "actually refrains from business and labor on that day for religious reasons."

Based on the above assumption of fact, we would answer your question in the affirmative. In conclusion we should like to quote from your letter as we believe your answer is clear and correct.

" . . . further, that it simply resolves itself into a question of fact as to whether he actually closes his barber shop at sundown Friday and keeps it closed until sundown Saturday, which would require the watchful eye of officers to determine the facts as to his closing and opening his shop, and as to his conscientious belief, of course, that is between himself and his God."

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Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Frederik B. Isely*
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FBI:db

APPROVED FEB 12, 1941

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

