OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Garrison, Jr., Director
Texas Department of Public Safety
Camp Mabry
Austin, Texas

Dear Sir:

Opinion No. O-3759
Re: What powers can be exercised by a Texas Ranger in the checking of livestock?

This is to acknowledge receipt of your letter asking us to analyze Article 1444a, Vernon's Annotated Penal Code, advising what powers may be exercised by a Texas Ranger in the checking of livestock.

The Article to which you refer was enacted at the Second Called Session of the Forty-first Legislature in 1929. It is officially published as Chapter 19, page 52 of the General Laws of the Forty-first Legislature, Second Called Session, and reads as follows:

> "Any person who is the driver of any truck, automobile or other vehicle containing any livestock or domestic fowl which is upon or being driven upon any land of which said driver is not owner, lessee, renter or tenant, or which is upon or being driven upon any highway, public street or thoroughfare, who fails to have in his possession and exhibit to any person or peace officer upon demand a written permit authorizing said movement, signed by the owner or caretaker of said livestock or domestic fowl or from the owner or person in control of the land from which said driver began said movement shall be fined not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars for each head of livestock and each domestic fowl

> in said movement, unless said driver upon demand of said person or peace officer makes, signs and delivers to said person or peace officer a written statement containing all the information herein required to be included in permits. Said driver shall be fined not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars for each head of livestock and each domestic fowl in said movement which is not covered by all the following information: Name of place of origin, including name of ranch or other place; point of destination including name of ranch, market center, packing house or other place; number of livestock or fowls with the description thereof, including kind, breed, color, and also marks and brands if there be any. Failure or refusal of such driver to exhibit to a person or peace officer said permit or to make said statement, shall constitute probable cause for any person or peace officer to search said truck or vehicle to ascertain if it contains any stolen livestock or stolen domestic fowls and to detain said movement a reasonable length of time to ascertain whether any stolen livestock or stolen fowls are contained therein. Any driver who has in his possession any false or forged permit or who makes any false written statement shall be fined not less than Two Hundred ($200.00) Dollars nor more than Five Hundred ($500.00) Dollars or he shall be imprisoned in the county jail not less than sixty (60) days nor more than six (6) months, or he shall be punished by both such fine and imprisonment. It is provided that the provisions of this Act shall also apply to slaughtered livestock and fowls and butchered portions thereof."

We have been unable to find any court decision construing any part of the above statute. There does not appear to have been any case involving it to reach our appellate courts. Therefore, we have no precedents to guide us in making the analysis you request.

The statute appears to be within the police power of the State, insofar as concerns the authority it extends to peace officers. We doubt the legality of that portion of the law attempting to require drivers of vehicles to exhibit the permit, or make the statement prescribed in lieu of such permit, to persons other than peace officers, but a determination of that question is not now before us.

In passing the act, the legislative intent is apparent from the following language of the emergency clause:

> "The facts that there are numerous thefts of livestock and domestic fowls and that the said stolen livestock and fowls are being hauled in trucks, automobiles and other vehicles from ranches, pastures and premises along public roads, thoroughfares and highways and that there is no adequate law regulating movements of livestock by trucks, automobiles and other vehicles whereby such thefts may be prevented and detected create an emergency * * **

Texas Rangers, whether officers, non-commissioned officers or privates within the organization are "peace officers" and clothed with all the powers of such. Article 6570, Revised Civil Statutes of Texas, 1925; Article 36, Code of Criminal Procedure, 1925. Therefore, the Rangers may exercise all of the authority granted under the provision of the statute under consideration.

By provisions of the act, the officers are authorized to stop any vehicle upon it appearing that such vehicle is transporting livestock or domestic fowl, either alive or slaughtered, and to request the driver to exhibit the permit described in the statute. If the driver has no such permit, it will be proper for the officers to request that the driver personally make the statement referred to. If refusal is then made, the officers may search the vehicle, making such reasonable investigation as may be necessary to ascertain whether there are any marks or brands, and to obtain a description of the animals or fowls being moved. The statute in event of such failure or refusal, provides for detention of the vehicle for a "reasonable length of time to ascertain whether any stolen livestock or stolen fowls are contained therein."

The term "reasonable time" has been variously defined by different courts, but it is generally agreed that

the words have no set limits and no precise definitionsis possible to meet every situation. What constitutes a reasonable time depends entirely on the facts and circumstances of each particular case, and is to be decided in each case as a matter of fact. In the Texas case of H. & T. C. Ry. Co. v. Roberts, 50 Tex. Civ. App. 69, 109 S.W. 932, an instruction defining "reasonable time" to be such length of time as may fairly, properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances, was held not erroneous. Unnecessary delay must, of course, be avoided; the officer should proceed with dispatch.

As the penalties fixed by the law are such as to classify the offenses defined as misdemeanors, and there is no provision for arrest without warrant, in the absence of the detection of stolen property or conduct on the part of the driver constituting a breach of the peace, the officer should obtain a warrant of arrest before taking such driver into custody for a violation of the provisions requiringg a permit or statement in lieu of such permit.

We wish to observe here that the statute under consideration does not alter or change in any degree the right of an accused or suspected person to waive the requirement of a warrant, either to search the vehicle or submit to arrest, in event of a violation. With the express consent of the driver, the officer would have the right to inspect and check the livestock being transported in any vehicle, irrespective of the provisions of this law.

In compliance with the verbal request of Ranger Sergeant Best, we have prepared, and append to this letter our analysis of the contents and application of the statute herein discussed.

Trusting that the above is satisfactory, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Benjamin Woodall

Benjamin Woodall
Assistant

BW:ewr

APPROVED JUL 16, 1941

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN