



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-4748

Re: (1) Custody of gambling paraphernalia after seizure and pending destruction proceedings,
(2) Proper officer to destroy gambling paraphernalia on order of court.

We have carefully considered your letter of recent date in which you request our opinion as to whether equipment seized as gambling paraphernalia by a Texas Ranger should be retained in the custody of the Ranger seizing the same pending a destruction under order of the court. You also ask whether the destruction order should be directed to the Ranger or to the Sheriff of the county wherein the property was seized.

The Penal Code of this State devotes an entire chapter to the subject of gaming. Article 632 of said Code requires any "sheriff or other peace officer" having knowledge of a violation of the laws against gaming to "immediately avail himself of all lawful means to suppress such violation."

Article 633 authorizes magistrates to issue search warrants and directs the seizure of "any gambling paraphernalia, device or equipment" found upon execution of such warrant. With reference to the duty of peace officers and the court in respect to property taken into custody as gambling paraphernalia, etc., we direct attention to the provisions of Article 636 and a portion of Article 637, as amended, from which we quote the following:

"Art. 636. It shall be the duty of every sheriff, or other peace officer by virtue of the warrant authorized by this chapter to seize and take into his possession all gaming tables, devices and other equipments or paraphernalia of gambling houses, the existence of which has come to his knowledge and to immediately file with the justice of the peace, county

judge, or district judge, a written list of the property seized designating the place where same was seized, and the owner of same, or the person from whom possession was taken. Thereupon said justice of the peace, county or district judge shall note the same upon his docket and issue, or cause the clerk of the court to issue a written notice to the owner or person in whose possession the articles seized were found, commanding him to appear at a designated time, not earlier than five days from the service of such notice, and show cause why such articles should not be destroyed. If personal service cannot be had upon the person to whom same is directed, a copy of said notice shall be posted for not less than five days, either upon the courthouse door of the county where the proceedings are begun or upon the building or premises from which the property seized was taken.

"Art. 637. Section . If upon hearing of the matter referred to in the preceding Article, the Justice of the Peace, County Judge or District Judge, before whom the cause is pending, shall determine that the property seized is a gaming table or bank or is used as equipment or paraphernalia for a gambling house, and was being used for gaming purposes, he shall order same to be destroyed, but any part of same may, by order of the Court be held as evidence to be used in any case until the case is finally disposed of. Property not of that character and not so used shall be ordered returned to the person entitled to possession of the same. The officer, within not less than fifteen (15) nor more than thirty (30) days from the entry of said order shall destroy all property the destruction of which has been ordered by the Court, unless the owner, lessee or person entitled to possession under this law shall, before the destruction of said property, file suit to recover same. Acts 1907, page 110.

"Sec. 2. If upon a hearing of the matter referred to in Article 636, Penal Code of Texas (1925), the Justice of the Peace, County Judge or District Judge before whom the cause is pending shall determine that the property seized, or any part thereof, is not gambling paraphernalia per se, but that the same or any part

thereof was used as equipment or paraphernalia for a gambling house and was being used for gaming purposes and that said property is capable of being used for some legal purposes, he may, in his discretion, by order of the Court, declare the same confiscated and cause the same to be delivered to the State of Texas, or any political subdivision thereof, or to any State institution to be kept by it for its own use and benefit. The officer shall show by his return the disposition of the property made by him, which shall be in compliance with the orders of the Court.

"Sec. 3. If upon a hearing of the matter referred to in Article 636, Penal Code of Texas the Justice of the Peace, County Judge or District Judge before whom the cause is pending, shall determine that the property seized is a gaming table, bank or gambling paraphernalia and equipment per se, or if the Justice of the Peace, County Judge or District Judge shall determine that the same, or any part thereof, was in fact used as equipment or paraphernalia for a gambling house or was being used for gaming purposes, then any money or coins seized in or with said equipment or paraphernalia shall, by order of the Court, be declared confiscated, and the Court shall cause the same to be delivered to the State of Texas or any political subdivision thereof, or to any State institution to be used by it for its own use and benefit, or the Court may in its discretion order such money or coins to be delivered to the Grand Jury of the County in which such equipment or paraphernalia was seized, to be used by said Grand Jury for the purpose of investigating the violation of the gaming laws of this State or for the purpose of investigating violations of any of the provisions of the Penal Code of this State. At the end of the term of each Grand Jury and before the discharge of the same, the Grand Jury shall report to the District Judge impanelling the same the amount of money received under the provisions of this Section and an accounting of all funds expended, and the balance of such funds, if any, shall be turned over to the Clerk of said District Court, to be held by said Clerk until the next Grand Jury is impanelled, at which time

such money will be turned over and delivered to such succeeding Grand Jury.

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From a careful reading of the above cited and quoted statutes it is observed that Articles 632, 633 and 636, Penal Code, make it the duty of "peace officers" to execute searches and seizures for gambling devices. Article 36 of the Code of Criminal Procedure defines peace officers to be: "The sheriff and his deputies, constable, the marshal or policeman of any incorporated town or city, the officers, non-commissioned officers and privates of the State ranger force, and any private person specially appointed to execute criminal process."

Among the provisions of the act creating the Texas Department of Public Safety (Acts 1935, 44th Leg., ch. 181, p. 444, as amended Acts 1937, 45th Leg., ch. 373, p. 772 Vernon's Annotated Civil Statutes, Articles 4413 (1) - 4413 (29)) which places the Texas Ranger force and personnel under the jurisdiction of the Department of Public Safety, the following language appears in Section 11 (Vernon's, Article 4413 (11)):

"(1) The Texas Ranger Force and its personnel, property, equipment and records, now a part of the Adjutant General's Department of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Department of Public Safety, and are hereby designated as the Texas Rangers, and as such, constitute the above mentioned division of the Department.

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"(4) The officers shall be clothed with all the powers of peace officers, and shall aid in the execution of the laws.

"They shall have authority to make arrests, and to execute process in criminal cases; and in civil cases when specially directed by the judge of a court of record; and in all cases shall be governed by the laws regulating and defining the powers and duties of sheriffs when in the discharge of similar duties; except that they shall have the power and shall be authorized to make arrests and to execute all process in criminal cases in any county in the State. All officers operating by virtue of this Act shall

have the authority to make arrests, as directed by warrants, and without a warrant under the conditions now authorized by law, and also in all cases when the alleged offender is traveling on a railroad, in a motor vehicle, aeroplane or boat. When any of said force shall arrest any person charged with a criminal offense, they shall forthwith convey said person to the county where he so stands charged, and shall deliver him to the proper officer, taking his receipt therefor. All necessary expenses thus incurred shall be paid by the State.

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"(6) In the execution of the laws of the State under the Department of Public Safety, the officials shall in all cases where it becomes necessary to seize property and destroy the same, to proceed as now provided by law; and all property so seized shall be stored and a list thereof presented to a District Judge in the District where such property is seized, who shall dispose of same in the mode and manner now provided by Articles Nos. 5112, 5113 and 5114, Revised Civil Statutes 1925.

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Investigation of the reference in numbered paragraph (6) of the above quotation to Articles 5112, 5113, and 5114, Revised Civil Statutes 1925, discloses that said articles referred to the mode of disposing of properties seized under the liquor laws in effect at the time of the passage of the Texas Public Safety Act, supra. Said articles were repealed in 1935 (Acts 1935, 44th Leg., 2nd C. S., ch. 467, p. 1795). Irrespective of the effect of such repeal it will be observed that such paragraph (6) only requires the District Judge to dispose of the property seized in accordance therewith and does not specify additional duties of the officer; whereas, Article 637 of the Penal Code, supra, is directly applicable to gambling equipment and paraphernalia, and prescribes the method of destroying same.

It is our opinion that "the officer" referred to in Article 637, supra, refers to the officer seizing the equipment mentioned in Articles 632, 633 and 636, and that when property is seized by a Texas Ranger by virtue of the provisions of the laws condemning gambling, it is the duty of such Ranger to retain the property until final disposition by the

court. It is also our opinion that the destruction order, when made in accordance with the provisions of Article 637, should be directed to the officer having custody of the property - in this case, the Texas Ranger, and not to the Sheriff or any other officer.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Benjamin Woodall
Benjamin Woodall
Assistant

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APPROVED AUG 5, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman