



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable S. M. Lister, Chairman  
Texas Prison Board  
Second National Bank Building  
Houston, Texas

Dear Sir:

Opinion No. O-4766

Re: Does the Texas Prison System have the right to lend or lease a drag line or ditching machine to do some work for private individuals?

From your letter of recent date we quote the following:

"The Texas Prison System owns a drag line, or ditching machine. We have recently spent considerable money putting this machine in first-class shape for our own use.

"A group of citizens in Houston County telephoned me last night and wanted to either rent, lease, or borrow this machine to do some work for private individuals. I understood this work has no connection whatever with the Prison System or any other department of the State. I told these gentlemen that personally I was opposed to allowing the machine to be used for work outside the Prison System; however, I would like you to give me an opinion as to whether or not we have the right to lend or lease this property for the use set out above."

Article 6166g, Vernon's Annotated Civil Statutes, provides for the management and control of all properties of the Texas Prison System. Such article reads as follows:

"The Texas Prison Board, together with the manager hereinafter provided for, shall

Honorable S. M. Lister, Page 2

be vested with the exclusive management and control of the Prison System, and all properties belonging thereto, subject only to the limitations of this Act, and shall be responsible for the management of the affairs of the Prison System and for the proper care, treatment, feeding, clothing and amangement of the prisoners confined therein."

Article 6166o, Vernon's Annotated Civil Statutes, reads as follows:

"The Board shall have power to authorize the manager to sell and dispose of all products of all farms and industries connected with the prison system and all personal and moveable property, at such prices and on such terms and under such rules as it may deem best and adopt; and it may lease any real estate for agricultural or grazing purposes or lease other fixed property and appurtenances belonging thereto upon such terms as it may deem advantageous to the interests of the prison system." (Emphasis ours)

In 38 Words and Phrases (Perm. Ed.) 572-573, under the phrase "sell and dispose of", it is said:

"A power to 'sell and dispose of' property is merely a power to sell, but a power to 'dispose of', without any other qualification, extends to a disposal by exchange as well as sale, including that by partition, which is a species of exchange."

This definition is shown to have the approval of several jurisdictions, although no Texas case is cited. See Rutledge v. Crampton, 150 Ala. 275, 43 So. 822; In re Carr, 16 R. I. 645, 19 A. 145; Lindsey v. Robinson, 180 Ga. 648, 180 S. E. 106; Phelps v. Harris, 101 U. S. 370, 3 L. Ed. 855.

It is our opinion that prison property cannot be legally loaned or leased for a private enterprise. The power delegated to the Prison Board by the terms of Article 6166o,

Honorable S. M. Lister, Page 3

supra, to "sell and dispose of" the personal and movable property of the prison system does not carry with it either an expressed or implied delegation to lend or lease such property for private purposes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Benjamin Woodall*  
Benjamin Woodall  
Assistant

BW:GO

APPROVED AUG 29, 1942  
*Genard C. Mann*  
ATTORNEY GENERAL OF TEXAS

APPROVED  
OPINION  
COMMITTEE  
BY *[Signature]*  
CHAIRMAN