



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable A. W. Coker, Vice Chairman
Penitentiary Committee
House of Representatives

Dear Sir:

Opinion No. 0-5092

Re: Whether the Legislature
may suspend, for the duration
of the war, the
statute forbidding use
of prison labor on any
but State owned or leased
farms.

We are in receipt of your letter of February 9th enclosing copy of a bill amending Section 2 of Chapter 212, Acts Regular Session of the 40th Legislature so as to permit prison labor to be employed on farms other than those owned or leased by the State "during war or a national emergency." You ask us to "revise this bill, if necessary, in order that it might not repeal any law or be in conflict with any law after the duration of the emergency provided for in the bill."

We have accordingly prepared a substitute bill, which instead of amending the existing law, merely suspends the inhibition of the present law against the use of prison labor on any but State owned or leased farms for the duration of the present war and for such number of additional months as you may care to designate. We attach our draft of such substitute bill hereto, and point out that the number of months should be filled in before the bill is introduced. It was our thought that reference in the bill to "an emergency" might lead to ambiguity.

You also inquire whether the Legislature has the power to suspend a law. Unquestionably, the Legislature, and the Legislature only, does have such power, so long as the suspension of such statute does not contravene any provision of the State or Federal Constitutions.

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Section 28 of Article I of the Constitution of Texas provides:

"No power of suspending laws in this State shall be exercised except by the Legislature."

Judge Hawkins, speaking of this constitutional provision for the Texas Supreme Court in *Spence v. Fenchler*, 107 Tex. 443, 180 S. W. 597, said:

"It may be conceded, though we do not herein hold, that there is in our Constitution no limitation upon the power of the Legislature to restrict the operation of a statute, conditionally, by an arbitrary standard which is not obnoxious to the Constitution itself....."

The restriction, under existing law, against the employment of prison labor on privately owned and operated farms is one imposed by statute only, and not by Constitutional provision; consequently the Legislature is empowered to repeal such restriction entirely, or it may, in the manner provided in the attached bill, suspend such restriction for a limited time only.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Walter R. Koch*
Walter R. Koch
Assistant

WRK:file
encl.

APPROVED FEB 11 1947
Harold G. Mason

ATTORNEY GENERAL OF TEXAS

