



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable C. H. Cavness  
State Auditor  
Austin, 11, Texas

Dear Mr. Cavness:

Opinion No. O-7390

Re: Whether or not the Prison Board, the General Manager of the Prison System, or any of the prison employees, may legally assess and collect any fees or amounts of money from prison employees because such person may have been responsible for allowing a convict to escape; and other cognate matters.

We have your letter requesting our opinion upon the following questions, which for convenience sake we have re-numbered:

"1. Can the Prison Board, the general manager of the Prison System, or any of the prison employees legally assess and collect any fees or amounts of money from any prison employee because such person may (or may not) have been responsible for allowing a convict to escape?

"2. If you rule in the negative on question No. 1 above, should such prison employees who have been assessed and paid such fees at \$25.00 per escape be reimbursed by the Prison System; if so, for what period of time (retroactive to when)?

"3. Of the prison personnel, who can legally declare a convict to be a "trustee" and for what period of time? (Please cite governing statutes.)

"4. Can convicts legally drive over the highways of Texas in prison owned motor vehicles, with or without a guard or other prison employee being present?

"5. Can such convicts legally obtain a driver's or chauffeur's license to drive prison owned or other motor vehicles over State Highways?

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"6. What effect does this practice of allowing prisoners to drive prison owned motor vehicles have on the prison insurance coverage, covering public liability and property damages? (Please cite statutes, if any).

"7. What legal rights are allowed such prison employees and peace officers in pursuing an escaping convict as to entering privately owned property, buildings, etc.? (Please cite statutes)"

Subsequent to receipt of your inquiry we requested further information relating to the first two questions, and you replied as follows:

"I received a letter this morning which indicates that there are no written contracts or agreements between the employees of the Prison System and the General Manager or Prison Board concerning the collection of any amounts of money because any such employee may have been responsible for allowing a convict to escape. We are told that it is simply a practice that has been handed down through the years and that there are no direct indications as to whether it is an 'administrative policy' except that it is a verbally handled matter, and that all Prison employees such as guards, farm managers, etc., are told of the condition on being hired and that they all clearly understand that they are subject to the assessment of such amounts of money. The money is collected directly from the employees most responsible for the escaping of the convict, and frankly we are unable to determine just where the authority for this arises."

We shall answer your questions in the order above stated.

1. Section 10 of Article XVI of the Constitution says:

"The Legislature shall provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law."

There are no statutes authorizing the Board of Prison Commissioners or the General Manager of the Prison System to impose fines or pecuniary assessments upon employees of the Prison System who may neglect the performance of their duties assigned them by law. On the contrary, as respects the proposed assessments involved in your question 1, the Legislature has enacted Article 318 of the Penal Code, providing:

"Any officer, jailer, or guard who has the legal custody of any person accused or convicted of a felony not capital who wilfully permits such person to escape or to be rescued shall be confined in the penitentiary not less than two nor more than five years."

Again, in Article 321 of the Penal Code it is provided:

"Any officer, jailer or guard who has the legal custody of a person accused or convicted of a felony not capital who negligently permits such person to escape or be rescued shall be fined not exceeding one thousand dollars."

Since the Legislature has thus specifically dealt with the precise matter of escapes through willfulness or negligence of the officer or guard having him in custody, the method there prescribed by necessary implication excludes any other method of assessment of penalties or fines in dealing with escapes.

In our opinion, the stated practice of the Board is in the nature of a penalty, and is beyond the authority of the Board.

2. If it should be that the deductions or assessments, such as you mention, have been unlawfully made by the Board, or its officers, they are unlawful and beyond the authority of the Board, as answered in the preceding question. The question of whether or not the employee guard thus suffering the deduction or paying the assessment may recover the same, and if so, from whom and how, perhaps should not be answered by us, since it pertains to the personal right of the party aggrieved, and is not therefore one as to which we should advise. In any event, the question of recovery would depend in some measure perhaps upon whether the deduction or actual payment, other than by deductions, was voluntarily paid, and therefore not recoverable upon the principle of voluntary payment, while on the other hand, whether or not the impending danger to the guard of loss of employment by discharge would constitute legal duress. We cannot safely state a rule applicable alike to all cases, for each such individual situation depends upon its own peculiar facts.

3. Only the Board of Prison Commissioners has authority to appoint trustees. Subject, however, in cases of extreme emergency, to the right of any farm manager to fill a vacancy in any position theretofore held by a trusty for a length of time not to exceed ten days. (Art. 6184b). You will find that this matter is fully regulated in Articles 6184a to 6184j of Vernon's Codification of the Revised Civil Statutes.

4. No prisoner, except trustees, may lawfully leave the prison without being accompanied by proper guard.

A trusty may legally drive over the highways of the State in a prison-owned motor vehicle with or without a guard, or other prison employee being present, provided it be "upon business connected with the prison". (Art. 6184e, Rev. Civ. Stat., Vernon's Cod.)

Article 6184g further places limitations upon trustees being at large or off the prison property.

5. Subject to what we have said immediately above with respect to prisoners, we answer Question 5 that convicts may legally obtain a driver's or chauffeur's license to drive prison-owned, or other motor vehicles, over the State's highways. Section 2 of Article 6087b (Vernon's Cod. of the Rev. Stat.) in subdivision (a) provides that:

"No person, except those hereinafter especially exempted, shall drive any motor vehicle upon a

highway in this State unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act."

Section 4, by necessary implication, states who are entitled to a license by specifically naming those to whom a right to a license is forbidden. Nowhere in this Section do we find anything prohibiting the issuing of a license to a convict. Of course, a convict who is ineligible to receive a license would for that reason be denied one.

6. Your question is very general, but we think it is answered in the decision of Texas Prison Board et al v. Ca-been, 159 S. W. (2) 523, writ of error refused. It is there held:

"It is our conclusion that by the enactment of Article 6166a10 the Legislature did not waive the immunity of the State of Texas from liability for torts committed by the convicts in the penitentiary. \* \* \*. The language of the article does not create a liability against the State and its employees, with power in the Texas Prison System to protect its employees from such liability, but the insurance is for protection against an existing liability. \* \* \*. There being no liability but for this article, and this article not having created a liability, then it cannot afford appellee relief."

Since Article 6166a10 authorizes insurance for the protection of "officers and employees" of the Texas Prison System from liability to third persons arising out of the use and operation of automobiles, motor trucks, and other motor vehicles used by the Texas Prison System, and not therefore for the benefit of prisoners driving such vehicles, we can not perceive any possible effect of the practice mentioned by you upon the Prison's insurance coverage in any event.

7. The local rights of guards of the Prison System with respect to the pursuing of escaping convicts are the same as those of the ordinary peace officers. There is no special statute applying to guards or officers pursuing prison convicts.

They may employ every reasonable means, including force, necessary to effect a capture. Thus, they may enter privately-owned property without the owner's consent, or over

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his protest; or even break in a door, if his authority and mission be made known, and such owner persists in refusing admittance if reasonably necessary in their discretion to enter. For further discussion of these powers, see the case, Ex parte Sherwood, 15 S. W. 812.

The foregoing conclusions are predicated upon court decisions. There are no express statutes dealing with them.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
ASSISTANT

OS-MR

