



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 17, 1947

Honorable K. D. Hall
County Attorney
Refugio County
Refugio, Texas

Opinion No. V-35

Re: Whether a person pulling a combine with a tractor over a state highway violates Article 827a, Vernon's Penal Code, unless he has first obtained a special permit in accordance with the provisions of Article 6701a, Vernon's Annotated Civil Statutes.

Dear Sir:

Your letter of January 7, 1947, in which you request an opinion of this department on the question contained therein, has been referred to the writer for attention. Your letter is in part as follows:

". . .

"I would like to know whether or not a party pulling a combine over the State Highway with a tractor is violating the above Statutes, to-wit: 827a, Section 3a, if he did not have a special permit to pull such combine over said highway as is required by Article 6701a; in other words, is a combine an "implement of husbandry" under the Law of Texas?

"For your information, a combine, as you may know, is used for the purpose of harvesting small grain, and the one I have in mind is more than eleven (11) feet in width.

"In my opinion the intention of the Legislature was to permit all farming equipment to be moved over the highway without a special permit. The definition of "implements of husbandry" as provided in Article 6675a-1 (r) above, is somewhat indefinite, especially in view of the fact that the phrase 'as used in tilling the soil' is within the definition. The way this definition reads, it could be interpreted to mean implements strictly used for the tilling of soil,

such as the plow. . . " (emphasis supplied).

Article 827a, Section 3a, Penal Code of Texas, reads as follows:

"No vehicle shall exceed a total outside width, including any load thereon, of ninety-six (96) inches, except that the width of a farm tractor shall not exceed nine (9) feet, and except further, that the limitations as to size of vehicle stated in this section shall not apply to "implements of husbandry" including machinery used solely for the purpose of drilling water wells, and highway building and maintenance machinery temporarily propelled or moved upon the public highways." Article 827a, Section 9b, providing a penalty for violation thereof.

Article 6701a, Section 1, Vernon's Annotated Civil Statutes, provides the following:

"When any person, firm or corporation shall desire to operate over a state highway super-heavy or over-size equipment for the transportation of such commodities as cannot be reasonably dismantled, where the gross weight or size exceeds the limits allowed by law to be transported over a state highway, the State Highway Department may, upon application, issue a permit for the operation of said equipment with said commodities, when said State Highway Department is of the opinion that the same may be operated without material damage to the highway. Provided, however, that nothing in this Act shall prevent the full control of such movements or operations on the streets of cities and towns by the ordinances of such municipalities."

Article 6675a-1, paragraph (r), Vernon's Annotated Civil Statutes, defines "implements of husbandry," for the purposes of certain exemptions under Vernon's Penal Code, Article 827a, Section 3a, as "Farm Implements, machinery and tools as used in tilling the soil, but shall not include any passenger car or truck," while Article 6687b, Section 1, paragraph (g), Vernon's Annotated Civil Statutes, defines "implements of husbandry" for purposes of certain exemptions under the Driver's License Law as "Farm implements, machinery, and tools as used in tilling the soil, namely: Cultivators, farm trac-

tors, reapers, binders, combines, or mowing machinery, but shall not include any automobile or truck." (emphasis supplied)

Ballentine's definition of "implements of husbandry" is as follows:

"Any instrument used directly in the business of farming, and for no other purpose is an "implement of husbandry." Horse rakes, gang plows, headers, threshing machines, and combined harvesters are as clearly "implements of husbandry" as are hand rakes, single plows, sickles, cradles, flails, or an old fashioned machine for winnowing. There is no ground for excluding an implement from the operation of the exemption statute because it is an improvement, and supplants a former implement used with less effectiveness for the same purpose. Estate of Klomp, 119 Cal. 41, 39 L.R.A., 340, 342, 50 Pac. Rep. 1062."

Since Article 6687b, Section 1, Paragraph (g), is consistent with Article 6675a-1, Section 1, Paragraph (r), and treats of similar subject matter, it indicates the intention of the Legislature as to what constitutes "implements of husbandry" as applied to Texas highway and motor vehicle laws.

"If the intent remains obscure after reading the entire act, the court may consider other laws and circumstances indicating the legislative intention."

See Am. Surety Co. v. Artell Co., 120 Tex. 166, 36 S. W. (2d) 715; Barnes v. State, 75 Crim. Rep. 188, 170 S. W. 548, 39 T. J. 177.

It is our opinion that a combine is an "implement of husbandry" within the meaning of that term as used in Article 827a, Section 3a, Vernon's Penal Code, and that a person operating a tractor drawing a combine over a state highway without a special permit obtained in accordance with Article 6701a, Vernon's Annotated Civil Statutes, does not violate Article 827a, Vernon's Penal Code.

SUMMARY: (1) A combine is an "implement of husbandry" within the meaning of that term as used in Article 827a, Section 3a, Vernon's Penal Code.

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(2) A person operating a tractor drawing a combine over a state highway without a special permit obtained in accordance with Article 6701a, Vernon's Annotated Civil Statutes, does not violate Article 827a, Section 3a, Vernon's Penal Code.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Artie Stephens*
Artie Stephens
Assistant

APPROVED FEB. 17, 1947

Price Daniel
ATTORNEY GENERAL

AS-SH/JMc:jrb

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN