



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 8, 1947

Hon. Augustine Celaya, Chairman
Liquor Regulation Committee
House of Representatives
Austin, Texas.

Opinion No. V-134

Re: Constitutionality of
House Bill No. 118,
50th Legislature, re-
lative to the sale of
liquor to minors.

Dear Sir:

Your request for an opinion upon the above subject matter is as follows:

"As chairman of the Committee on Liquor Regulation, I will appreciate an opinion as to the constitutionality of House Bill 118 and amendments.

"I am especially concerned about the change in the law in that the author has eliminated the word 'knowingly' from Article 666-26(b)."

We have carefully examined House Bill 118 of the 50th Legislature and likewise the title thereto as shown by committee amendment. The bill purports to amend Article 666-26 of the Penal Code of the State of Texas. This is inaccurate and should be corrected as in the re-drafted amendment which we have taken the liberty to prepare and attach hereto.

The purpose of the Bill is to omit the word 'knowingly' from that part of the Texas Liquor Control Act which prohibits sale of certain liquors to persons under 21 years of age. Under the proposed bill, sale to a minor would be an offense regardless of whether the seller had knowledge of such non-age.

We note that you are "especially concerned about the change in the law in that the author has elim-

inated the word 'knowingly' from Article 666-26(b)."

The elimination of the word 'knowingly' does not affect the validity of the act - it merely goes to the merits of the bill, and presents a question solely for the consideration of the Legislature.

Corpus Juris Secundum Volume 22, Section 30, announces the general rule as follows:

"* * *. On the other hand, the Legislature may forbid the doing of, or the failure to do an act and make its commission or omission criminal without regard to the intent or knowledge of the doer, and if such legislative intention appears, the courts must give it effect, and in such cases, the doing of the inhibited act constitutes a crime, and the moral turpitude or purity of the motive by which it was prompted, and knowledge or ignorance of its criminal character, are immaterial circumstances on the question of guilt; such legislation is enacted and is sustained, for the most part, on grounds of necessity, and is not violative of the Federal Constitution. * * *"

In Pappas v. State, 188 S. W. 52, the Supreme Court of Tennessee said:

"It being clear that in statutory offenses a criminal intent or fraudulent intent is not always essential, it is equally clear that whether the scienter is a material element of the crime or not must be determined by the language used by the Legislature in defining the offense."

In Texas Liquor Control Board v. Duvall, 170 S. W. (2d) 820, involving a cancellation of a permit for employing a boy under eighteen years of age, it is said:

"The prohibited act of employing a minor in a position fraught with temptations that may lead to a life of dissipation, is declared in unqualified terms, unrelieved by any language importing that knowledge of the age of the minor, or that either good faith or intent was an element

of the offense. In authorizing the cancellation of a license for the sporadic sale of beer to a person under twenty-one years of age, the same Article of the statute in Subd. 1 (a), provides that such sale must be 'knowingly' made; but with reference to the offense of greater enormity, that is, of employing a minor in a business where he is constantly, day after day, exposed to a temptation that may result in his becoming an inebriate, no such qualifying language is found.

"This construction of the statute is in line with that given similar statutes, not only by our courts but by courts of the country over. In Peacock v. Limburger, 95 Tex. 258, 66 S. W. 764, our Supreme Court, answering certified question, held that a sale of liquor to a minor constituted a breach of the dealer's bond, whether the seller knew the fact of minority or not, * * *"

Justice Williams of the Supreme Court, writing the opinion in Peacock vs. Limburger, 66 S. W. 764, said:

"The statute in force when the sale was made (Rev. St. Art. 5060g; Acts 1893, p. 177) required a bond on condition that the dealer would not sell intoxicating liquors, etc., to any person under the age of 21 years, * * *"

"The statute also gave to any person aggrieved by the violation of the provisions of the bond a right of action for \$500.00, as liquidated damages. A proviso was to the effect that 'where the sale is made in good faith, with the belief that the minor was of age, and there is good ground for such belief, that will be a valid defense to any recovery on such bond.' The act of 1887 contained no such proviso, and under its provisions it has been held by the Court of Appeals -- correctly we think -- that a sale of liquor to a minor constituted a breach of the bond, whether the seller knew the fact of minority or not. The reasons for the decision are so fully and satisfactorily stated in the opinion of Judge Willson that a reference to it without further discussion of the point there decided is sufficient. McGuire vs. Glass (Tex. App.) 15 S. W. 127."

SUMMARY

House Bill 118, 50th Legislature, with corrected committee amendments eliminating the word "knowingly" from the offense of the sale of liquor to persons under 21 years of age (Art. 666-26 V. P. C.), is constitutional. Omission of the word "knowingly" in defining the offense does not affect the validity of the bill, going only to the merits of the bill.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ocie Speer*
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OS:lh:wb:mmc

APPROVED APR 9, 1947

Price Daniel
ATTORNEY GENERAL