



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

September 30, 1949

Hon. Jep S. Fuller
Criminal District Attorney
Beaumont, Texas

Opinion No. V-919.

Re: Construction of Art.
974a, V.C.S., as
amended by H.B. 158,
Acts 51st Legislature

Dear Sir:

Your request for an opinion relative to the construction of Article 974a as amended by the 51st Legislature has been subsequently limited by you to the following question:

"If the County Clerk has presented to him for recordation a subdivision plat, within the scope of Art. 974a, as amended, which plat has been approved by the proper authorities but which does not locate such subdivision by a corner of the original survey, would it be the duty of such clerk to receive and record such plat or to refuse to do so?"

Section 1 of Article 974a, V.C.S., prior to its amendment by the 51st Legislature provided:

"That hereafter, every owner of any tract of land situated within the corporate limits or within five miles of the corporate limits of any city . . . which contains twenty-five thousand inhabitants or more, . . . who may hereafter subdivide the same in two or more parts for the purpose of laying out any subdivision . . . shall cause a plat to be made which shall accurately describe all of the subdivision of such tract or parcels of land, giving dimensions thereof, and the dimensions of all the streets, alleys, squares, parks, or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto."

House Bill 158, Acts of the 51st Legislature, 1949, provides as follows:

"An Act to amend Section 1 of Chapter 231 of the Acts of the Regular Session of the Fortieth Legislature in 1927, appearing as Article 974a of Vernon's Revised Civil Statutes, relative to the approval of subdivision plats within the corporate limits or within five (5) miles of the corporate limits, of certain cities so as to provide that the benefits and the terms thereof shall extend to all cities; repealing Section 10 of Chapter 231, Acts, Regular Session, Fortieth Legislature; and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. That Chapter 231 of the Acts of the Regular Session of the Fortieth Legislature in 1927, appearing as Article 974a of Vernon's Revised Civil Statutes (Section 7 thereof however, appearing as Article 427b of Vernon's Revised Penal Code), be amended in the following particulars, to wit:

"(1) Section 1 of said Act, now appearing as Section 1 of said Article 974a, is hereby amended so that it shall hereafter read as follows, namely:

"Section 1. That hereafter every owner of any tract of land situated within the corporate limits, or within five miles of the corporate limits of any city in the State of Texas, who may hereafter divide the same in two or more parts for the purpose of laying out any subdivision . . . shall cause a plat to be made thereof which shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part, giving the dimensions thereof of said subdivision or addition, and dimensions of all streets, alleys, squares, parks or other portions of

same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto; provided, however, that no plat of any subdivision of any tract of land or any addition to any town or city shall be recorded unless the same shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part giving the dimensions thereof of said subdivision . . ." (Emphasis added)

Section 35 of Article III, Constitution of Texas provides as follows:

"No bill . . . shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed." (Emphasis added).

In construing the above quoted provision it has been held that the object of this provision of the Constitution is to compel the caption to contain the subjects embraced within the bill. This prevents the caption from concealing the purpose of the bill and avoids deception in its adoption. It is by means of the title that the legislator may reasonably be apprised of the scope of the bill so that surprise may be prevented. The title that states the purpose to make a certain change in the prior law limits the amendatory act to the making of the change designated and precludes any additional contrary or different amendment. Gulf Insurance Co. v. James, 143 Tex. 424, 185 S.W.2d 966 (1945); Ward Cattle and Pasture Co. v. Carpenter, 109 Tex. 103, 200 S.W. 521 (1918); Texas-Louisiana Power Co. v. City of Farmersville, 67 S.W.2d 235 (Tex.Comm.App. 1933); 39 Tex. Jur. 103.

We quote from the Gulf Insurance case the following:

"It is significant in this connection that the bill as originally introduced contained only the matter set out in Section 1

of the Act, Vernon's Ann.Civ.St.art.6687b, § 15, relating to the transfer of the operator's and chauffeur's license fund. The caption to the Act was entirely appropriate to cover that subject, but was not appropriate to cover a transfer of any other funds. Thereafter, some time on the last day of that session of the Legislature, the bill was amended by a free conference committee to include the seventeen additional funds, as provided for in Section 2 of the Act, Vernon's Ann.Civ.St.art.4385a. But no material change was made in the title to the bill when this amendment was added. This created an ideal situation whereby the members of the Legislature might be misled by the title to the Act.

"The title to the Act contains nothing to indicate that the body of the Act purported to transfer the seventeen special funds referred to in Section 2 of the Act, Vernon's Ann.Civ.St.art.4385a. Section 2 of the Act is therefore unconstitutional.

"We by no means intend to insinuate that the title to the Act was so drawn for the purpose of deceiving any one. There is nothing in the record to indicate such purpose. We merely hold that the title to the Act, as drawn, was capable of misleading those interested in the bill."

Article 974a prior to its amendment by the 51st Legislature contained no provision requiring the subdivision or addition to be located with respect to an original corner of the original survey of which it is a part. Such requirement was added in the body of House Bill 158 of the 51st Legislature. We note, however, that the caption does not contain any reference to such additional requirement; nor do we find any provision in the caption which shows that this additional change was to be made in Article 974a. As stated in the Gulf Insurance case, supra, we do not intend to insinuate that the title on this bill was drawn for the purpose of deceiving anyone. It may have been a complete oversight or error. We merely hold that the caption was not sufficient to give notice of the additional change made in the body of the bill.

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In view of the above quoted constitutional provision and the above holding by the Texas Supreme Court, it is our opinion that that portion of House Bill 158 requiring subdivisions or additions to be located with respect to an original corner of the original survey of which it is a part, is in violation of Section 35 of Article III of the Constitution of Texas.

You are therefore advised that if the County Clerk has presented to him for recordation the subdivision plat within the scope of Article 974a, as amended by House Bill 158, which plat has been approved by the proper authorities, but which does not locate such subdivision with respect to an original corner of the original survey, he should not refuse to receive and file such plat because of its failure to have a location with reference to an original corner.

SUMMARY

That portion of House Bill 158, Acts of the 51st Legislature, placing an additional requirement that plats of subdivisions or additions shall locate such subdivisions with respect to an original corner of the original survey is in violation of Article III, Section 35 of the Constitution of Texas, since that part of the amendment was not provided for in the caption of House Bill 158. Gulf Insurance Co. v. James, 143 Tex. 424, 185 S.W.2d 966 (1945); Ward Cattle and Pasture Co. v. Carpenter, 109 Tex. 103, 200 S.W. 521 (1918); Texas-Louisiana Power Co. v. City of Farmersville, 67 S.W.2d 235 (Tex.Comm.App.1933); 39 Tex.Jur. 103.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED

Price Daniel
ATTORNEY GENERAL

JH:bh:mw

By *John Reeves*
John Reeves
Assistant