



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

December 22, 1952

Hon. Joseph C. Ternus
County Attorney
San Patricio County
Sinton, Texas

Opinion No. V-1562.

Re: Constitutionality of
Subsection 1(a), Section
8, Article 827a, V.P.C.,
relating to vehicle speed
limits when special hazards
exist.

Dear Sir:

You have requested of this office an opinion concerning the constitutionality of Subsection 1(a) of Section 8, Article 827a, Vernon's Penal Code, which relates to motor vehicle speed limits under circumstances where special hazards exist. The provision in question reads as follows:

"No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing, having regard to the actual and potential hazards when approaching and crossing an intersection or a railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions; and in every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."

Section 8 of Article 827a, V.P.C., was re-enacted and amended by the 52nd Legislature as H. B. 458, ch. 346, p. 589, and it appears to be the Legislature's most recent expression respecting the regulation of highway traffic. Apparently it supersedes Section 51 of Article 670ld, V.C.S., the Uniform Traffic Code prohibition against reckless driving, a part of which was held unconstitutional on the ground of uncertainty in Ex parte

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Chernosky, 153 Tex. Crim. 52, 217 S.W.2d 673 (1949).
Such is the nature of the problem with which we are
confronted here.

Although a penal law will be declared void if it is framed in such an obscure or indefinite fashion that it cannot be readily understood (Tex. Const. Art. I, Sec. 10; Art. 6, V.P.C.), the framers of the statute may employ general terminology if it is intelligible to persons of ordinary intelligence. Such a statute does not have to spell out all of the ways in which the offense can be committed. Ex parte Montgomery, 86 Tex. Crim. 636, 218 S.W. 1042 (1920). In Ex parte Frye, 143 Tex. Crim. 9, 156 S.W.2d 531, 537 (1941), the Texas rule was stated thus:

"A penal statute is sufficiently certain, although it may use general terms, if the offense is so defined as to convey to a person of ordinary intelligence an adequate description of the evil or mischief intended to be prohibited.
..."

Statutes which attempt to define criminal offenses in connection with the operation of motor vehicles might be said to fall into two general categories. One type sets forth a sort of blanket prohibition designed to cover numerous situations in which the exact nature of the culpable conduct cannot be precisely described before it occurs, as, for example, "reckless driving." Several Texas penal statutes of this type have been declared void for uncertainty. Russell v. State, 88 Tex. Crim. 512, 228 S.W. 566 (1921); Ladd v. State, 115 Tex. Crim. 355, 27 S.W.2d 1908 (1930); Ex parte Chernosky, supra.

Other such regulatory measures attempt to describe the specific acts which are intended to be prohibited, and statutes of this type have been more favorably received by the courts than those described in the preceding paragraph. The provision under consideration here appears to fall into this latter category. A similar statute prohibiting motorists from driving in excess of a reasonable and proper speed, "having regard to the width, traffic and use of the highways and the

general and usual rules of the road, or so as to endanger the property, life or limb of any person," was held sufficiently definite to meet the requirements of due process, despite the fact that it prescribed no precise maximum rate of speed. Mulkern v. State, 187 N.W. 190 (Wis. Sup. 1922). Another such act, prescribing the standard of reasonable prudence under the circumstances, but also specifying a prima facie unlawful speed, was upheld against a similar challenge to its validity. Gallagher v. State, 141 N.E. 347, 29 A.L.R. 1059 (Ind. Sup. 1923).

We have been unable to locate any Texas decisions which consider the validity of Article 827a, Section 8, V.P.C., as it reads today. However, Article 794, V.P.C., before its repeal by the provision under consideration here, directing "all motor vehicles passing each other" to reduce their speed to fifteen miles per hour, was upheld over the objection that the quoted language was too obscure to define the offense. Davis v. Estes, 44 S.W.2d 952 (Tex. Comm. App. 1932). Later, Section 8 itself was upheld as a rule of civil conduct. Oriental Oil Co. v. Brown, 130 Tex. 240, 106 S.W.2d 136 (1937). As amended by the 52nd Legislature, this provision was referred to and left undisturbed in a recent decision of the Court of Criminal Appeals, although it does not appear that its validity was attacked in the proceeding. Ex parte De La Pena, 251 S.W.2d 890 (Tex. Crim. 1952).

Taken as a whole, Article 827a, Section 8, V.P.C., is an attempt to establish various maximum speed limits for motor vehicles operating under all conceivable driving conditions. Subsection 1(a), with which we are specifically concerned here, deals with the operation of vehicles under circumstances where special hazards exist, and the special hazards which the framers of the Act had in mind are spelled out in detail. The speed limits in this particular subsection are not set forth in terms of miles per hour, but rather by the standard of what is reasonable and prudent under the circumstances. However, subsection 1(b) prescribes definite miles per hour speed limits for different types of vehicles operating under normal conditions, "where no special hazard exists that requires lower speed for compliance with subsection 1(a) of this section." In other words, subsection 1(b) authorizes a motorist to drive his automobile at the rate of sixty miles per hour on an open highway

under normal daylight operating conditions, but subsection 1(a) requires that he reduce his speed in a reasonable and prudent manner when he approaches a hazard such as a curve, the crest of a hill, or an intersection.

It is difficult to predict what action the appellate courts will take with respect to any given penal statute which has been attacked as vague and indefinite. Such laws are frequently challenged on this ground, and each case seems to stand on its own merits. However, it is important to note that the nature of the offense created is always of vital importance to a determination of the validity of the law. In many instances the activities intended to be proscribed are difficult to describe, and in that case the terms of the statute may be more elastic, so long as they are suitable to the subject matter and fair and reasonable to those who will be governed by its provisions.

We feel that subsection 1(a), especially when read in pari materia with all of the other subdivisions of Article 827a, Section 8, provides a sufficiently definite criterion of liability to inform persons of average intelligence of the culpable acts it creates. It provides a somewhat flexible standard, but in the field of traffic regulation, absolute and inflexible standards are not always possible and seldom practicable and desirable. It is therefore our opinion that Article 827a, Section 8, Subsection 1(a), V.P.C., is constitutional.

SUMMARY

Article 827a, Section 8, Subsection 1(a), V.P.C., establishing speed limits for motor vehicles operating under conditions

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where special hazards exist, describes
with sufficient certainty the offense that
it is intended to prohibit and therefore is
constitutional.

APPROVED:

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Yours very truly,

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