



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 26, 1955

Hon. Allan Shivers
Governor of Texas
Capitol Station
Austin, Texas

Opinion No. MS-205

Re: Whether duplication of
language in Section 2
of House Bill 302, 54th
Legislature, renders the
penal provision of such
section invalid.

Dear Governor Shivers:

You have asked for the opinion of this office as to whether the duplication of language in Section 2 renders the penal provision of said section invalid.

The pertinent portions of Section 2 wherein the duplication appears reads as follows:

"Sec. 2. It shall also be unlawful for any . . . wholesale distributor or news agency, to require . . . any person . . . selling goods, . . . at retail to purchase or accept from such distributor or agency any particular pamphlet, magazine, or printed matter in order that such retailer might purchase or accept from such distributor or agency any particular pamphlet, magazine, or printed matter, in order that such retailer might purchase or secure from such distributor or agency any other magazine, pamphlet, or printed matter. . . ."

Article 6 of the Texas Penal Code provides:

"Whenever it appears that a provision of the penal law is so indefinitely framed or of such doubtful construction that it can not be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative."

The above Texas statute and court decisions thereon reflect the well established principle that penal laws, to be valid, must be certain and definite so that men of common intelligence will not have to guess at their meaning. Ex parte

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Chernosky, 153 Tex. Crim. 52, 217 S.W.2d 673 (1949), Ex parte Pierce, 127 Tex. Crim. 35, 75 S.W.2d 264 (1934). Furthermore, where a penal statute is so indefinitely drawn or is of such doubtful construction that it cannot be understood, either from its express language or from some written law of the State, it is void. Ex parte Meadows, 133 Tex. Crim. 292, 109 S.W.2d 1061 (1937).

The duplicitous nature of Section 2 of said Act renders said section ambiguous and uncertain and not sufficiently explicit to inform those who are subject to said section what conduct on their part will render them liable to the penalty, and therefore not meeting the well established standard of definiteness, the penal provision of Section 2 would be inoperative. This deficiency could easily be remedied during the present session of the Legislature by an amendment deleting the duplicitous material. Of course, in view of the separability clause contained in the bill, the other sections are not affected.

APPROVED:

Milton Richardson
Reviewer

Enos T. Jones
Reviewer

Robert S. Trotti
First Assistant

ROF/rt

Very truly yours,

JOHN BEN SHEPPERD
ATTORNEY GENERAL OF TEXAS

Robert O. Fagg
By/s/ Robert O. Fagg
Robert O. Fagg
Assistant