



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

July 11, 1957

Honorable Davis Bailey
County Attorney
Panola County
Carthage, Texas

Opinion No. WW-182.

Re: Whether Senate Bill 45, Acts of the 55th Legislature, Regular Session, has the effect of repealing Article 802-d of the Penal Code or is cumulative of it.

Dear Mr. Bailey:

This will acknowledge your request for an opinion dated June 15, 1957, wherein you submit for our consideration the following question:

Whether Senate Bill 45, Acts of the 55th Legislature, Regular Session, repeals Article 802-d of the Penal Code or is cumulative of it?

Senate Bill 45 was enacted by the 55th Legislature, Regular Session, and was approved by the Governor on May 31, 1957.

Section 1 of said bill reads as follows:

"Any male minor who has passed his 14th birthday but has not reached his 17th birthday, and any female minor who has passed her 14th birthday but has not reached her 18th birthday, and who drives or operates an automobile or any other motor vehicle on any public road or highway in this state or upon any street or alley within the limits of any city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949, while under the influence of intoxicating liquor, or who drives or operates an automobile or any other motor vehicle in such way as to violate any traffic law of this state, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars (\$100.00). As used in this section, the term 'any traffic law of this state' shall include the following statutes, as heretofore or hereafter amended:

Honorable Davis Bailey, page 2 (WW-182)

"Chapter 42, Acts of the 41st Legislature, Second Called Session, 1929;

"(Article 827a, Vernon's Texas Penal Code), except Section 9a thereof;

"Chapter 421, Acts of the 50th Legislature, Regular Session, 1947 (Article 6701d, Vernon's Texas Civil Statutes); Chapter 430, Acts of the 51st Legislature, Regular Session, 1949, (Article 827f, Vernon's Texas Penal Code); and Articles 795 and 801, Texas Penal Code of 1925."

Section 2 provides that the offending minor shall not be committed to jail in default of the payment of the fine imposed, but the Court shall have the power to suspend and take possession of such minor's driver's license and retain the same until the fine is paid.

Section 3 makes it a misdemeanor for any such minor to drive or operate a motor vehicle upon any public road, etc., without a valid driver's license.

Section 4 provides that the offenses created by the act shall be under the jurisdiction of the courts regularly empowered to try misdemeanors and not under the jurisdiction of the juvenile courts.

The caption of Senate Bill 45 recites that the Bill repeals Chapter 436, Acts of the 52nd Legislature, Regular Session, 1951. The latter act is codified as Article 802d of Vernon's Penal Code and deals generally with the same subject as Senate Bill 45. Section 5 of Senate Bill 45, however, expressly repeals Chapter 436, Acts of the 51st Legislature, Regular Session, 1949, which is a local game law relating to the hunting of quail in Wood County. We believe that the repealing clause embodied in Section 5 of Senate Bill 45 is void and of no force and effect whatever. It cannot have the effect of repealing the local game law cited for it is a subject not germane to the purposes of Senate Bill 45 as shown by its caption. A bill cannot embody more than a single subject. Tex. Const., Art. III, Section 35. We further believe that the remainder of Senate Bill 45 stands as enacted unaffected by the nullity of Section 5. This conclusion is supported by the rule that where a statute embraces two or more subjects, one of which is properly expressed in the title, the act is void only as to so much thereof as is not so expressed, if the extraneous provisions relating to matters not within the title are separable from the others. 39 Tex.Jur. pages 83-84; Texas-

Louisiana Power Co. v. Farmersville, 67 S.W.2d 235 (Comm.App.); Young v. Chilton, 41 S.W.2d 505 (Civ.App. error disp.); Prid-eaux v. Roark, 291 S.W. 868 (Comm.App.).

The subject matter covered by the remaining provisions of Senate Bill 45 are properly expressed in the caption and Section 5 is clearly separable from said provisions.

This leads us to the consideration of the effect of Senate Bill 45 upon Chapter 436, Acts of the 52nd Legislature, Regular Session, 1951 (codified as Article 802d of Vernon's Penal Code), which reads in part as follows:

"Section 1. Any minor who has reached his or her fourteenth (14th) birthday but has not reached his or her seventeenth (17th) birthday and who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, or upon any street or alley within the limits of an incorporated city, town or village, in a reckless manner, at an excessive rate of speed, or while under the influence of intoxicating liquors, as hereinafter defined in this Act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Dollar (\$1) nor more than Fifty Dollars (\$50).

"Sec. 2. (a) Any minor who drives any vehicle in willful or wanton disregard of the rights or safety of others or without due caution or circumspection, and at a speed or in a manner so as to endanger or be likely to endanger a person or property shall be guilty of reckless driving.

"(b) Any minor who operates a motor vehicle at a speed in excess of the maximum speed allowable under existing law shall be guilty of speeding.

"(c) Any minor who drives or operates an automobile or any other vehicle while such person is intoxicated or under the influence of intoxicating liquors shall be guilty of driving or operating a motor vehicle while under the influence of intoxicating liquors.

"Sec. 3. Provided that for good cause shown, and when it shall appear to the satisfaction of

the court that the ends of justice and the best interest of the public as well as the defendant will be subserved thereby, the courts of the State of Texas having original jurisdiction of such criminal actions shall have the power after conviction or plea of guilty to suspend the imposition of such fine and may place the defendant on probation for a period of ninety (90) days.

"Any such minor placed on probation shall be under the supervision of such court."

Repeals of statutes are of two kinds, express and implied. Hence in the absence of an express declaration, an act is not to be regarded as repealed unless this has been done by implication. The question of repeal, whether express or implied, is one of legislative intent. 39 Tex.Jur. pages 130-131. First National Bank v. Lee County Cotton Oil Co., 274 S.W. 127.

Although the caption of Senate Bill 45 declares that it is the purpose of said bill to repeal Chapter 436, Acts of the 52nd Legislature, Regular Session, 1951 (codified as Article 802d, Vernon's Penal Code), such recitation cannot constitute an express repeal of said Act, for the caption cannot declare substantive law but merely announces the subject or scope of the proposed legislation. We do believe, however, that since the question before us is one of legislative intent that the caption can be looked to in order to ascertain such intent. The foregoing recitation in the caption, together with the recitation in the emergency clause to the effect that "the present law is inadequate to assure observance of traffic laws by minors who are subject to this Act" evidences a clear legislative intent that Senate Bill 45 should repeal Chapter 436, Acts of the 52nd Legislature, Regular Session, 1951 (codified as Article 802d of Vernon's Penal Code). Without detailing the points of conflict, we further believe that the provisions of Senate Bill 45 are so in conflict with the provisions of Article 802d that the two acts cannot be harmonized, and hence the last expression of the Legislature upon the subject, same being Senate Bill 45, must prevail.

SUMMARY

Senate Bill 45, Acts of the 55th Legislature, Regular Session, repeals by implication Chapter 436,

Honorable Davis Bailey, page 5 (WW-182)

Acts of the 52nd Legislature, Regular Session, 1951
(same being codified as Article 802d of Vernon's
Penal Code.).

Yours very truly,

WILL WILSON
Attorney General of Texas

By *Leonard Passmore*
Leonard Passmore
Assistant

LP:pf:wb

APPROVED:

OPINION COMMITTEE

H. Grady Chandler, Chairman
Marietta McGregor Payne
Roger I. Daily
Wayland C. Rivers, Jr.

REVIEWED FOR THE ATTORNEY GENERAL

BY: Geo. P. Blackburn