



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

August 18, 1971

Honorable Homer R. Taylor
County Attorney
304 Courthouse Building
Wharton, Texas 77488

Opinion No. M-938

Re: Revival of Article 1484,
Vernon's Penal Code, by
Senate Bill 249.

Dear Mr. Taylor:

You have requested the opinion of this office on whether Senate Bill 249, which was passed in 1971 by the 62nd Legislature, revives Article 1484, Vernon's Penal Code.

Senate Bill 249 reads as follows:

"AN ACT relating to the recording and re-recording of livestock brands and marks; and declaring an emergency.

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

Section 1. (a) This Act shall apply to every county in this State. In all the counties each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of 1925 shall within six months after this Act takes effect have his mark and brand for such stock recorded in the office of the county clerk of the county. These owners shall record the marks and brands whether the brands and marks have been previously recorded or not.

(b) The owner shall have the right to have his mark and brand recorded in his name who according to the present records of the county first recorded the brand and mark in the county, or in event it can not be ascertained from the records who first recorded the brand and mark in the county, then the person who has been using such mark and brand the longest shall have the right to have the brand and mark recorded in his name.

(c) After the expiration of six months from the taking effect of this Act all records of marks and brands now in existence in the county shall no longer have any force or effect and after the expiration of six months only the records made after this Act takes

effect shall be examined or considered in recording marks and brands in the county.

(d) Immediately upon the taking effect of this Act the county clerk of the county shall have this Act published in some newspaper of general circulation in the county for a period of thirty days. The publication shall be paid for by the county out of the general county fund.

Sec. 2. All clerks in re-registering brands shall comply with Articles 6890 through 6899, inclusive, of the Revised Civil Statutes of Texas, 1925, as amended, and with Section 1, Chapter 273, Acts of the 41st Legislature, 1929, as amended (Article 6899a, Vernon's Texas Civil Statutes), and shall also be aware of and comply with Articles 1484, 1485, and 1486 of the Penal Code of Texas, 1925.

Sec. 3. All brands and marks registered under the provisions of this Act shall be re-registered every 10 years in the manner prescribed in Section 1 of this Act.

Sec. 4. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended; and that this Act take effect and be in force from and after its passage, and it is so enacted."

In Attorney General's Opinion No. O-6869 (1945), this office concluded that Article 1484, Vernon's Penal Code, and a portion of Article 6890, Vernon's Civil Statutes, which prohibited a livestock owner from recording and using more than one brand or mark to identify livestock, were repealed by implication by the 1945 amendment to Article 6899, Vernon's Civil Statutes. This latter amendment, designated as Section 1a of Article 6899, allowed the recordation and use by one owner of more than one brand or mark and was in irreconcilable conflict with the earlier statutes, Articles 1484 and 6890. The 1945 amendment adding Section 1a to Article 6899 provided that all laws and parts of laws in conflict were repealed. The legislature has never modified the language of any of the foregoing statutes so as to require an interpretation different from that of Opinion No. O-6869.

No language in Senate Bill 249 expressly attempts to revive Article 1484 of the Penal Code. Senate Bill 249 requires only that brands and marks be recorded within the time specified and makes no express restriction on the number of brands or marks which may be recorded or used.

Section 2 of Senate Bill 249 provides that county clerks recording brands and marks shall comply with various statutory provisions, including Article 6899, Vernon's Civil Statutes, and Article 1484, Vernon's Penal Code. Since Section 1a of Article 6899 allows the recordation and use of more than one brand or mark and Article 1484 makes punishable by fine the use of more than one brand or mark, the two statutes remain in irreconcilable conflict. No language in Senate Bill 249 resolves this conflict. This office therefore remains of the opinion that Section 1a of Article 6899 by clear implication repealed the earlier enacted Article 1484.

Should the reference to Article 1484 in Section 2 of Senate Bill 249 be construed as an attempt to revive Article 1484, the attempt is ineffective in view of the Texas Constitution, Article III, Section 36, which provides as follows:

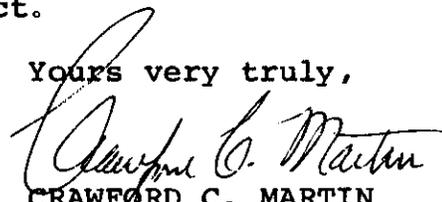
"No law shall be revived or amended by reference to its title; but in such case the acts revived, or the section or sections amended, shall be re-enacted and published at length."

This constitutional provision prohibits the revival of a statute repealed expressly or by implication merely by reference to the repealed statute and requires that the repealed statute must be completely re-enacted before it can be effective. Thomas v. Groebl, 147 Tex. 70, 212 S.W. 2d 625 (1948); State Bank of Barksdale v. Cloudt, 258 S.W. 248 (Tex. Civ. App.-San Antonio, 1924, no writ). This office therefore is of the opinion that Senate Bill 249 does not revive Article 1484 of the penal code.

SUMMARY

Senate Bill 249, passed by the 62nd Legislature, does not revive repealed Article 1484, Vernon's Penal Code. The provision in Article 6899, Section 1a, that one owner may record and use more than one brand or mark with which to identify livestock remains in effect.

Yours very truly,


CRAWFORD C. MARTIN
Attorney General of Texas

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APPROVED:
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