



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

November 29, 1972

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

Opinion No. M- 1273

Re: Does Art. 353c, V.P.C.
prohibit persons from
furnishing alcoholic
beverages to a prisoner
in a county jail?

Dear Mr. Taylor:

You have requested an opinion in reference to the following questions:

- (1) "Does Art. 353c, VTPC prohibit persons from furnishing Alcoholic Beverages to a Prisoner in a County Jail?"
- (2) "Is it a criminal offense to furnish alcoholic beverages to a prisoner in a county jail?"

You advise us that a trustee of the county jail furnished beer to one of the prisoners confined in the county jail of your county.

Article 353c, Section 1, Vernon's Penal Code, reads as follows:

"It shall be unlawful for any officer or employee of the Texas Prison System or for any other person to furnish, attempt to furnish, or assist in furnishing to any inmate of the Texas Prison System any alcoholic beverage, narcotic drug, barbiturate, or drug stimulant that would cause prisoners to behave abnormally, except from the prescription of a physician. It shall also be unlawful for any person to take, attempt to take, or assist in taking any of the aforementioned

articles into the confines of property belonging to the Texas Prison System which is occupied or used by prisoners except for delivery to a prison warehouse or pharmacy or to a physician." (Emphasis added.)

The words "Texas Prison System" have a definite and distinct meaning. The Legislature has placed the Texas Prison System under the supervision, management and control of the Texas Department of Corrections. Art. 6166a-1, et seq., V.C.S. On the other hand, County Jails are established by the Commissioners' Courts of the various counties in the State. Art. 2351, Subd.(7), V.C.S.

In the interpretation of criminal or penal statutes, offenses cannot be created nor can omissions by the Legislature, through inadvertance or otherwise, be supplied. Ratcliff v. State, 289 S.W. 1072 (Tex. Crim. 1927). Statutes cannot be extended by construction to acts not fairly and clearly embraced within their terminology. In order to sustain a conviction, a particular act must plainly and unmistakably be within the clear definition of the statute and if there exists any doubt whether the statute embraces a particular act, this doubt must be resolved in favor of the accused. Murray v. State, 2 S.W. 757 (Tex. Ct. of App. 1886). No person can be punished for an offense not made penal by the plain import of the words of a law. Art. 7, V.P.C.

Our opinion is the furnishing of beer to an inmate of a county jail does not fall within the prohibition of Article 353c, Vernon's Penal Code, supra.

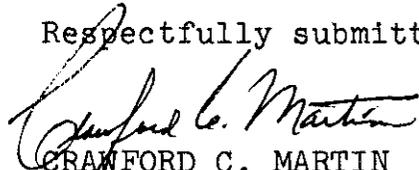
We do not have sufficient factual information to make a determination as to whether furnishing beer to an inmate of a county jail is a violation of any other criminal statute.

SUMMARY

Article 353c, V.P.C., making it a penal offense for persons to furnish alcoholic beverages to inmates of the Texas Prison System, does not include County Jails.

Honorable Homer R. Taylor, page 3 (M-1273)

Respectfully submitted,


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