



**THE ATTORNEY GENERAL  
OF TEXAS**

November 13, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable John B. Holmes, Jr.  
District Attorney  
Harris County, Texas  
201 Fannin, Suite 200  
Houston, Texas 77002

LO-89-92

Dear Mr. Holmes:

You ask whether it is an offense under section 31.04 of the Penal Code where "under the terms of a rental agreement, one party consents to the use of his property by another, and the renter or the lessee subsequently returns the property, but refuses to pay the rental fee."

Section 31.04 provides in pertinent part:

(a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token;

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them; or

(3) having control of personal property under a written rental agreement, he holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals.

As you note, the culpable mental state of intent to avoid payment of service is an essential element to be proven in order to constitute an offense under any of the subsections of section 31.04. While it is not within the province of this office to make factual determinations as

to what constitutes intent, we will assume the requisite intent to avoid payment for services exists in reviewing your scenario.

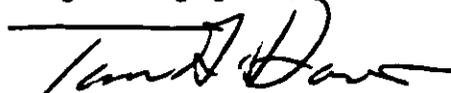
In the situation you describe, the renter or lessee returns the property but refuses to pay the rental fee. Under section 31.04(a)(2) a requisite element of the offense is that the renter or lessee has the control of services to which he is not entitled. This element does not exist under your scenario since control of services is obtained under a rental agreement.

Section 31.04(a)(3) makes it an offense for a person having control of property under a rental agreement to hold the property beyond the expiration of the written rental agreement without the effective consent of the owner. In the situation you describe, the renter or lessor returns the property. This fact would negate any offense under section 31.04(a)(3).

Section 31.04(a)(1) makes it an offense for a person to secure performance of services by deception, threat, or false token with intent to avoid payment for the service. It is possible that there could be a violation of subsection (a)(1) in the situation you describe. Your example did not, however, include a statement regarding how the services were obtained. All the elements set out in section 31.04(a)(1) would have to be present for there to be a violation of that section in the situation you describe.

We do not consider whether the situation described may constitute a violation of some other penal provision.

Very truly yours,



Tom G. Davis  
Assistant Attorney General  
Opinion Committee

TGD/er

APPROVED: Rick Gilpin, Chairman  
Opinion Committee

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