



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1996

The Honorable Richard J. Miller
Bell County Attorney
P.O. Box 1127
Belton, Texas 76513

Letter Opinion No. 96-140

Re: Whether communicating a false alarm, in violation of section 42.06, Penal Code is a crime of "moral turpitude" (ID# 38005)

Dear Mr. Miller:

You have requested our opinion as to whether the offense of placing a false alarm is one involving "moral turpitude." Section 42.06, Penal Code, provides:

(a) A person commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

- (1) cause action by an official or volunteer agency organized to deal with emergencies;
- (2) place a person in fear of imminent serious bodily injury; or
- (3) prevent or interrupt the occupation of a building, room, place assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor unless the false report is of an emergency involving a public primary or secondary school, public communications, public transportation, public water, gas, or power supply or other public service, in which event the offense is a state jail felony.

It is well established that "[g]enerally, a crime involving dishonesty or false statement is considered to be one involving moral turpitude." *United States v. Gloria*, 494 F.2d 477 (5th Cir. 1974), *cert. denied*, 95 S.Ct 306 (1974). No Texas case has specifically determined whether the filing of a "false alarm," in contravention of section 42.06, constitutes a crime of moral turpitude. Other offenses involving dishonesty have, however, been held to constitute such crimes. *See, e.g., Searcy v. State Bar of Texas*, 604 S.W.2d 256 (Tex. Civ. App.--San Antonio 1980, writ ref'd n.r.e.) (making false statement in loan application in order to obtain loan for personal benefit is crime of moral turpitude);

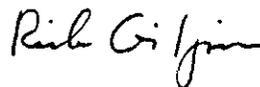
in loan application in order to obtain loan for personal benefit is crime of moral turpitude); *State v. Nelson*, 551 S.W.2d 433 (Tex. Civ. App.--San Antonio 1977, writ ref'd n.r.e.) (making illegal political contribution encompasses moral turpitude).

An offense need not involve personal gain in order to constitute a crime of moral turpitude. In *Robertson v. State*, the court held that the offense of lying to a police officer, as proscribed by section 37.08, Penal Code, was a crime of moral turpitude, "regardless of whether it was done for personal gain, because it involves dishonesty." *Robertson v. State*, 685 S.W.2d 488, 492 (Tex. App.--Fort Worth 1985, no writ). Any crime, the court declared, that involves "false statement and dishonesty" may be deemed one of "moral turpitude." *Id.* at 492. *Accord, Lape v. State*, 893 S.W.2d 949 (Tex. App.--Houston [14th Dist.] 1994, writ ref'd).¹ One element of the section 42.06 offense is that the actor knows the report to be false or baseless. We believe it is clear that the offense of communicating a false alarm, in contravention of section 42.06, is one of moral turpitude.

S U M M A R Y

The offense of communicating a false alarm, in contravention of section 42.06, Penal Code, is a crime of "moral turpitude."

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

¹One court has held that the offense of issuing a bad check, pursuant to section 32.41(a), Penal Code, is not a crime of moral turpitude, because it does not contain the element of intent to defraud, *Dallas County Bail Bond Board v. Mason*, 773 S.W.2d 586 (Tex. App.--Dallas 1989, no writ). This ruling is not consistent with other cases.