A SHORT HISTORY OF THE TEXAS BLUE LAWS

by

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CHAPTER I

HISTORICAL BACKGROUND

The term "blue law" is slang used to denote a state penal statute regulating or prohibiting working, recreation, and conducting of business on Sunday. Although there are conflicting reports about the origin of the term, it is generally agreed the statutes were given the name blue law because they were originally bound in blue paper.

Sunday laws, which have been called blue laws since American colonial times, date from a much earlier period and are religious in character.[1] The observance of the Sabbath goes back to the Fourth Commandment which provides for one day of rest every seven days and prohibits all unnecessary work on that day. The Sabbath of the Fourth Commandment, however, was not the first but the seventh day of the week.

The earliest recognition of Sunday by Christians is recorded by Justin Martyr, a converted philosopher who taught in the city of Rome about the middle of the second century. He reported that in the second century the Christians at Rome gathered on the first day of the week to hear readings from the Scriptures, participate in common prayer,

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[1] Alvin W. Johnson and Frank H. Yost, Separation of Church and State in the United States (Minneapolis: University of Minnesota Press, 1948), p. 219.

and dine together, in a similar manner in which the Jews celebrated the Biblical Sabbath.[2] In his First Apology, chapter 67, written about 155 A. D., Martyr wrote the following to the emperor:

> Sunday is the day on which we hold our common assembly, because it is the first day in which God, having wought a change in the darkness and matter, made the world; and Jesus Christ our Saviour on the same day rose from the dead. For He was crucified on the day before that of Saturn (Saturday); and on the day after that of Saturn, which is the day of the Sun, having appeared to His apostles and disciples, He taught them these things, which we have submitted to you for your consideration.[3]

For several years many Christians had attached the "Lord's Day" label to the first day of the week and observed it as a weekly festival in celebration of the resurrection of Christ. But, it was also the day observed by another religious cult, the Mithraists, as being sacred to the sun. The weekly use of Sunday by the pagans for worship of the sun had begun quite early. Believing that the Sun, Moon, Mars, Mercury, Jupiter, Venus, and Saturn ruled the heavens, astrologers devoted the hours for each of the seven days of the week to these gods in succession. Each day was assigned to the planetary god to whom the first hour of the day was dedicated. Sunday, the day of the Sun, was given its name

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[2]Leo Pfeffer, Church, State, and Freedom (Boston: Beacon Press, 1967), p. 270.

[3]"The First Apology of Justin," Chapter 67, in Ante-Nicene Fathers, American Edition (24 vols.; New York: Charles Scribner's Sons, 1899), I, 185-86.

because the first hour of that day was regarded as sacred to the sun.[4]

The first known compulsory Sunday law was issued by the Roman Emperor Constantine, a pagan, in 321 A. D. as part of his program to unify the conflicting interests of the pagans and Christians in the empire. The law was promulgated on March 7th by virtue of the emperor's power as Pontifex Maximus in all matters of religion and it stated:

> On the venerable Day of the Sun let the magistrates and people residing in cities rest, and let all workshops be closed. In the country, however, persons engaged in agriculture may freely and lawfully continue their pursuits; because it often happens that another day is not so suitable for grain-sowing or for vineplanting; lest by neglecting the proper moment for such operations the bounty of heaven be lost.[5]

About the same time this law was passed, soldiers in the army were also commanded to worship on the "venerable day of the sun."

Being fully aware of the significance attached to the first day of the week by both Christians and pagans, "Constantine evidently saw in Sunday observance an institution which he could make a point of unification."[6] Thus,

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[4]Franz Cumont, The Mysteries of Mithra (New York: Dover Publications, Inc., 1956), pp. 167, 191.

[5]Code of Justinian, Book 3, Title 12, Law 3, trans. by Philip Schaff, History of the Christian Church (8 vols.; Grand Rapids: Wm. B. Eerdmans Publishing Company, 1957), III, 380.

[6]Johnson and Yost, Separation of Church and State, p. 219.

the first Sunday legislation by the emperor Constantine was the product of that pagan conception, developed by the Romans, which made religion a part of the state. Although the law of 321 was not an ecclesiastical enactment, it was a civil one with religious overtones. The law exempted the rural Roman, mentioned no god, and carried no criminal penalties for violations. Nevertheless, it set a precedent for a succession of political and theological conflicts which were to mark the next sixteen centuries.[7]

Following the decree of 321, there was no effort in Roman law to enforce cessation of labor on Sunday. In fact, there is record of only one council of the church, the Council of Laodicea, which attempted such an enforcement. The council which met at Laodicea about 381 A. D. ruled in its twenty-ninth canon that "the Lord's day the Christians shall especially honor, and, as being Christians, shall, if possible, do no work on that day."[8] The council further decreed that if Christians persisted in resting on the seventh day, "They shall be shut out from Christ."[9]

Although many Christians had called Sunday the "Lord's

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[7]Warren L. Johns, Dateline Sunday U. S. A. (Mountain View, Calif.: Pacific Press Publishing Association, 1967), p. 239.

[8]Charles Joseph Hefele, A History of the Council of the Church (9 vols.; Edinburgh: T & T. Clark, 1896), II, 316.

[9]Ibid.

Day" as early as the second century, the terminology did not appear in Roman law until late in the fourth century, when it was used in relation to Sunday observance in a decree of the three co-emperors Gratianus, Valentinianus, and Theodosius. The decree provided that "On the day of the sun, properly called the Lord's day by our ancestors, let there be a cessation of lawsuits, business, and indictments..."[10]

Sunday legislation between the time of Constantine and the fall of the Roman Empire was a combination of the pagan, Christian, and Jewish cults.[11] During the latter part of the fourth century the law which had been enacted under Constantine was more rigorously enforced and civil transactions of every kind on Sunday were generally strictly forbidden. In the century that followed, a succession of decrees was issued which freed Christians from tax collection on Sunday. Law suits as well as circus spectacles, horse races, and theatrical shows were also forbidden on the first day of the week.[12]

The Third Council of Orleans in 538 forbade all field work such as "plowing, cultivating vines, reaping, mowing,

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[10]Clyde Pharr, The Theodosian Code, Book 8, Title 8, Law 3, (Princeton: Princeton University Press, 1952), p. 209.

[11]William Addison Blakely, American State Papers Bearing on Sunday Legislation (Washington, D. C.: Religious Liberty Association, 1911), pp. 751-54.

[12]Johns, Dateline Sunday, p. 246.

threshing, clearing away thorns, or hedging," and promised punishment to violators "as the ecclesiastical powers may determine."[13] Later, in 585, the Second Council of Macon threatened the countryman who placed a "yolk on the neck of his cattle" on the Lord's Day with being "soundly beaten with whips."[14] The movement had gone so far by the end of the sixth century that Gregory the Great protested against the prohibition of baths on Sunday.[15]

The Justinian Code had collected all the Sunday laws of the empire, and by the time Charlemagne was crowned emperor, this code was in effect over all of what later became the "Holy Roman Empire." A number of additional restrictions to the Sunday observance laws, which were recorded in the code, had been made under the Emperor Charlemagne. These restrictions required the observance of Sunday from sundown until sundown, and in general forbade servile work and the holding of courts and markets on the Lord's Day. Likewise, women were forbidden to do weaving and other similar household duties in order that the honor and rest of the Lord's Day

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[13] Ibid., p. 247.

[14] Ibid.

[15] James Hastings, ed., Encyclopaedia of Religion and Ethics (13 vols.; New York: Charles Scribner's Sons, 1951), XII, 105-6.

could be kept.[16]

Later, the Sunday laws of England were based upon the Roman laws requiring Sunday observance in the Empire. The Anglo-Saxon king, Ine, issued in 691 a strong decree prohibiting ordinary labor on Sunday. Under kings Alfred and Athelstane in the early 900's the prohibition, however, was mainly against marketing, and there seems to have been no further statute in England against working on Sunday until the late seventeenth century. Later, William the Conqueror and Henry II declared the codes of Justinian on Sunday observance to be the law of England. In 1237 Henry III prohibited marketing on Sundays, and Henry VI in 1444 forbade fairs in churchyards on the Lord's Day.[17]

Shortly after James I became king of England, a new law became effective which levied a fine of a shilling on anyone absenting himself from church on Sunday. But, in 1618 he signed a law permitting some sports to be played after church. In 1625, however, a law passed during the first year of Charles I put restraints on most Sunday amusements.[18]

In 1676, Charles II acceded to a very strict Sunday law

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[16]Johnson and Yost, Separation of Church and State, pp. 220-21.

[17]Ibid., pp. 221-22.

[18]Ibid., p. 221.

on which most Sunday laws in the United States were later based. The statute provided:

> For the better observation and keeping holy the Lord's day, commonly called Sunday, bee it enacted...that all and every person...shall on every Lord's day apply themselves to the observation of the same by exercising themselves thereon in the dutyes of piety and true religion publiquely and privately and that noe tradesman, artificer workman labourer or other person whatsoever shall doe or exercise any worldly labour, business or worke of their ordinary callings...and that noe person or persons whatsoever, shall publickly cry shew forth or expose to sale any wares merchandise, fruit, herbs goods or chattells whatsoever upon the Lord's day.[19]

Except in Rhode Island, laws regulating activities on Sunday were among the first enactments of the American colonies. The first Sunday regulation to be promulgated in the present United States was by the London Company for Virginia in 1610 and demanded the death penalty for a violation. The regulation required that

> Every man and woman shall repair in the morning to the divine service and sermons preached upon the Sabbath day, and in the afternoon to divine service, and catechising, upon pain for the first fault to lose their provision and the allowance for the whole week following; for the second, to lose the said allowance and also be whipt; and for the third to suffer death.[20]

Another law was passed by Virginia in 1623 which made anyone failing to attend church on Sunday subject to a fine

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[19]Great Britain, Laws, Statutes, etc., An Act for the better Observance of the Lord's day commonly called Sunday, 29 Chas. 2, ch. 7, The Statutes of England, 1235-1713 (2d ed.), I, p. 412.

[20]Blakely, American State Papers, p. 33.

payable in tobacco. This law provided that "whosoever shall absent himself from divine service any Sunday, without an allowable excuse, shall forfeit a pound of tobacco" and anyone absent for a month "shall forfeit 50 lbs. of tobacco."[21]

Although there is no record of any person suffering death for violation of the Sunday law in Virginia, enforcement was strict in Puritan New England with its theocratic church-state union. In the Massachusetts Bay Colony, for example, John Baker was whipped for "shooting att fowle on the Sabboth day."[22] The law under which he was whipped required all inhabitants of the colony to cease their labor at 3:00 P. M. ever Saturday in order that the rest of the day could be spent catechizing and preparing for the sabbath.[23]

A later law provided a fine of forty shillings and public whippings for anyone profaning the Lord's Day by doing servile work. "But if it clearly appear that the sin was proudly, Presumptuously and with a high hand committed" the offender "shall be put to death or grievously punished at the Judgement of the Court."[24] The law also forbade Sunday

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[21] Ibid., p. 34.

[22] Johns, Dateline Sunday, p. 4.

[23] Ibid.

[24] Blakely, American State Papers, pp. 36-37.

traveling on horseback as well as sports and recreation.

In colonial New York Sunday laws were issued by both the Dutch and the English and the primary purpose of these laws was to insure church attendance. The first recorded prosecution for a Sunday violation in New York occurred in 1655, while the colony was still under Dutch rule. Abraham de Lucena, a Jewish merchant, was charged for violating the law by keeping his store open during the Sunday sermon. There is no record, however, of the final disposition of this case.

In 1664, a new law was passed which combined the requirement of public preaching and prohibition of violation on Sunday.[25] The immediate predecessor of the present New York Sunday law was an act passed in 1695 which prohibited conduct very similar to that proscribed by the present New York statute.[26]

Although Sunday was very strictly observed under the laws of Puritan New England, it was generally less strictly observed in the other colonies. The middle colonies, where the Presbyterian and the Dutch Reformed Churches were strong, were about midway between New England and the Anglican South as far as enforced Sunday observance was concerned.

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[25]Pfeffer, Church, State, and Freedom, p. 272.

[26]For a brief discussion and summary of the New York statute, which is a typical present day Sunday law, see Pfeffer, Church, State, and Freedom, pp. 273-77.

An act passed by Maryland in 1723 not only prohibited common labor on Sunday but also gaming, fishing, fowling, and other recreations. Anyone found guilty of violating the law was to be fined two hundred pounds of tobacco. If the fine was not immediately paid on conviction of the offense, however, the magistrates, or other officials, were required to order the offender to be whipped or put in the stocks. This law was later made a part of the laws of the District of Columbia and remained in effect until the Court of Appeals of the District set the law aside in 1908 as "obsolete" and "repealed by implication."[27]

A similar act was passed by Georgia a few years later which provided for a punishment of ten shillings for each offender fifteen years of age or older. Georgia's Sunday law required church-wardens and constables of each parish to walk through the respective towns of the province and to apprehend all violators of the law. In addition, all individuals were required to assist these officials in carrying out the provisions of the act or be fined ten shillings of sterling for every refusal.[28]

From the foregoing it can be seen that Sunday laws in Europe, as well as in America from the founding of the first

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[27]Blakely, American State Papers, pp. 45-47.

[28]Ibid., pp. 51-53.

colonies, were based upon the tenants of the Christian religion. The laws were concerned with a purely religious institution and not a civil one. These laws have never regarded any other day other than the first day of the week as having a sacred character. The Puritans, while generally following the precedent established by law of Charles II, went even further in the stringency of Sunday observance required and in the penalties imposed.

The first national issue on the matter of Sunday observance took place during the second decade of the nineteenth century. In 1810 a federal law was passed "to regulate the post office establishment," requiring post offices to be open "every day on which a mail or bag, or other packet or parcel of letters shall arrive."[29] As a result of this law, the postmaster general felt it was his responsibility to compel deputy postmasters at places where mail arrived on Sunday to keep the office open for at least a few hours on that day. The hours of opening were generally those following public worship, or early in the morning. This action by the postmaster resulted in strong protest at the following session of Congress. Although remonstrances were presented in 1812, 1815, and 1817, a law was finally passed in 1825 which required

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[29]Anson Phelps Stokes and Leo Pfeffer, Church and State in the United States (New York: Harper & Row, Publishers, 1964), p. 253.

post offices at which mail arrived on Sunday to be kept open during the entire day. This greatly stirred the religious forces of the country and when the discussion over the Sunday mail question came up again in 1829, it attracted much national attention.[30]

The constitutional justification for Sunday laws was first expressed by the United States Supreme Court in 1885. The case involved a Chinese laundryman's challenge of the constitutionality of a California law under which he had been arrested and convicted of a misdemeanor for operating his laundry on Sunday. The Supreme Court sustained his conviction on the grounds that the law protected public health under the police power of the state.[31] In an opinion by Justice Stephen J. Field:

> Laws setting aside Sunday as a day of rest, are upheld not from any right of government to legislate for the promotion of religious observance, but from its right to protect all persons from the physical and moral debasement, which comes from uninterrupted labor.[32]

For the first time the United States Supreme Court had given judicial recognition to the "civil regulation" premise as a means to justify Sunday closing laws.

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[30] Ibid., p. 493.

[31] Stokes and Pfeffer, Church and State in the United States, p. 501.

[32] Soon Hing v. Crowley, 113 U. S. 703; 28 L. Ed. 1145, 730 (1885).

In 1896 the high Court sustained on the same basis a Georgia statute regulating the movement of freight trains within the state on Sundays adding that it did not unconstitutionally interfere with interstate commerce. A few years later the Court held that a Minnesota law was not arbitrary in refusing to classify barbering as an act of necessity or charity that could legally be performed on Sundays.[33]

Like most other police regulations in the United States, Sunday observance laws are both state statutes and municipal ordinances. The state statutes usually give local communities the right within certain limits to determine their own regulations. These have varied according to several factors including the times, the size and character of the communities, and their historic traditions.

In New England and in areas of the Middle Atlantic states the tradition of the Puritan Sabbath was particularly strong. In these areas, as well as the Western Reserve and other parts of the Middle West settled by people with strong New England traditions, Sunday has been considered until recent years a day in which everything was subservient to worship.

The religious origin of the present Sunday statutes in many states is revealed by such religious terms as "Lord's

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[33]Johnson and Yost, Separation of Church and State, pp. 235-37.

day," "Sabbath day," "Christian Sabbath," "secular business," "worldly employment," "Sabbath breaking," "Sabbath observance," "holy time," "profanation of the Lord's day," and "violate the Sabbath." One American court has summarized the history of Sunday laws as follows:

> All Sunday legislation is the product of pagan Rome, the Saxon laws were the product of Middle Age legislation of the Holy Roman Empire. The English laws are the expansion of the Saxon, and the American are the transcript of the English.[34]

This analysis of the origin of Sunday laws has never been questioned or overruled by American courts.

Since World War II, large merchandising outlets operating mainly through suburban branches have discovered that a large number of customers wish to shop on Sunday. Other retailers, in an effort to suppress Sunday selling competition, have sought to modernize the old Sunday blue laws to secularize them and use them as an instrument of competitive control.

Most Sunday law advocates today argue that such laws are secular and that by restricting Sunday business they insure a day for rest and recreation rather than promote a day for worship. Another argument advanced is that the working man should be protected from a continuous seven-day-a-week labor, and that he must have a day when the entire

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[34] Commonwealth v. Hoover, 25 Pa. 134 (1904) as given in Johnson and Yost, Separation of Church and State, p. 222.

family can be together. In spite of this secular emphasis, however, it is easy to recognize that blue laws are rooted in the religious concept of Sunday as a day of worship.

CHAPTER II

EARLY HISTORY OF THE TEXAS BLUE LAW

Although the first known blue law to be passed in Texas appears to have been a municipal ordinance rather than a state statute, its passage was undoubtedly influenced not only by similar laws which had previously been passed in the United States but also by the religious organizations which came into Texas following the arrival of the first American settlers. Therefore, the reasons for the passage of this ordinance, as well as the later enactment of the first state blue law in 1863, can be found in the religious-political conditions which existed in Texas before and after the revolution of 1836.

Prior to the establishment of American colonies in Texas, Roman Catholicism was the established religion and any religion other than Catholicism was excluded. When Moses Austin arrived from Missouri in the settlement of San Antonio, he found Texas in the final throes of Spanish rule. In December 1820, he was summoned to appear before Colonel Don Antonio Martinez, Governor of the Province of Texas, and was questioned as to his name, native country, and residence. Austin replied that he was a native of Connecticut, a resident of Missouri, a Catholic, a merchant, and a dealer in lead ore.[1]

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[1] William Stuart Red, The Texas Colonists and Religion 1821-1836 (Austin: E. L. Shettles, Publisher, 1924), p. 4.

The son of Moses Austin, Stephen F. Austin, was also probably recognized by the Spanish and Mexican authorities as a Catholic since he was made a citizen of Mexico by a special decree of the national congress on May 22, 1823.[2]

Moses Austin died before he could complete his plans for establishing a colony of three hundred American families in Texas, and the task was left to Stephen to finish. In March 1822, Stephen F. Austin left his newly founded settlement and traveled to Mexico City to negotiate with the unstable new government of Mexico, which had only recently come to power, for the colony rights which had been promised to his group by the Spanish authorities. After repeated delays the agreement was finally confirmed by the Mexican government on April 14, 1823. When Austin returned to Texas, however, he found that the settlement was nearly broken up, and immigration had ceased.[3]

Despite the many hardships endured by the immigrants to Texas and the difficulties which Austin encountered in having his grant confirmed by the Mexican government, Austin's colony was firmly established by 1825 below the San Antonio Road near the Brazos and Colorado Rivers. The earliest settlers located on the Brazos in what is now Washington County. Austin's success led him to secure other grants providing

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[2] Ibid., p. 5.

[3] Ibid., pp. 6, 12.

for the settlement of twelve hundred additional families. And, the Mexican government made American immigration easier by passing colonization laws providing liberal land grants to the new settlers and special grants to the empresarios.

Under the terms of the colonization laws of Mexico, not only were the settlers required to profess allegiance to the Roman Catholic faith but protestant worship was also forbidden in the colonies. In fact, however, the Catholic faith was but slightly observed among the American settlers in Texas, or not observed at all except in compliance with the requirements of Mexican law in obtaining land titles and other transactions.[4] Nevertheless, it appears from the letters of inquiry sent to Austin that a few potential colonists did stay away from Texas because of their hostility to Catholicism.[5]

Although the Roman Catholic Apostolic was the established religion of Texas, there was a notable absence of spiritual leaders in the colonies. This absence of leaders was the result of two primary causes. Generally, Mexican officials failed to comply with their pledge to furnish the colonists with adequate religious leadership and equipment for religious worship and training. Also, the fact that the

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[4] Ibid., p. 5.

[5] Ibid., pp. 7-11.

first colonists were exempt from taxation for a period of six years resulted in insufficient funds in the treasury of the government to permit a plentiful supply of spiritual leaders in Texas.[6]

One section of the colonization laws of Mexico, under which the earlier settlements in Texas were made, provided that

> The executive, in connection with respective ordinary ecclesiastics, shall take care that the new towns are provided with a competent number of pastors; and, with the concurrence of the same authority, he shall propose to Congress the salary to be paid them by the new settlers.[7]

Austin's contract of 1825 with the Mexican government provided that he should "solicit in due time the necessary number of priests for the administration of spiritual affairs."[8]

When Austin returned to Texas from Mexico City in 1823, he informed the people that he expected to secure the services of Father Francisco Maynes, a Catholic priest from Natchitoches, to become curate of his colony. The governor, Don Antonio Martinez, approved the petition for the appointment of Father Maynes and stated to the commandant-general that he thought the priest was well suited to minister to

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[6] Ibid., pp. 32-46.

[7] H. P. N. Gammel, The Laws of Texas, 1822-1897 (10 vols.; Austin: The Gammel Book Company, 1898), I, 132.

[8] Ibid., p. 48.

the colonists. But, after receiving repeated promises for the services of the priest to perform marriage ceremonies, baptisms, and administer to the colonists other spiritual needs, Father Maynes did not come. Although willing to come to the colony, the priest evidently held back by the ecclesiastical authorities in Monterey.[9]

Similarly, the colonists were denied the services of other priests. José Antonio Saucedo, the political chief, wrote Austin that Don Refugio de la Garza, priest in San Antonio, would come to the colony. But, Garza never came. Father Juan Pena was appointed to the office of "vicario foraneo," which included the territory of the colonists, but he soon displeased Saucedo and was discharged by the bishop for exceeding his authority.[10] Finally, during the early part of 1830 Fray Antonio Diaz, of the College of Guadalupe, was sent to Nacogdoches, while Fray Miguel Muro, a regular priest, was appointed to go to Austin's colony at San Felipe. Austin, desiring the services of a secular priest, however, was unwilling to accept the services of Father Muro; and the priest, being unable to receive the financial support of the colonists, apparently never came to the Austin colony.[11]

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[9]Red, Colonists and Religion, pp. 33-35.

[10]Ibid., p. 38.

[11]Ibid., p. 46.

In the meantime, itinerant protestant preachers had begun illegally to come into the colonies of Texas in increasing numbers. And, they found the spiritual decline among the colonists, particularly the general disregard for the observance of the Sabbath, to be alarming. William Dewees, for example, wrote from San Antonio in 1826 that

> ...all classes, men, women and children engage in gambling. Of a Sabbath morning, every person attends church. In this they are very particular. The service closes at ten o'clock. Immediately afterwards, priests and people repair to gambling rooms, where they spend their time in playing and betting large sums of money till night closes in. They then go to a party or fandango, according to their rank and station in society.[12]

Even though isolated meetings were held on Sunday by various protestant groups, which included primarily the Methodist, Baptist, and Presbyterian faiths, widespread missionary endeavors were strictly forbidden by Mexican authorities prior to 1836.

As early as 1816 William Stevenson, a Methodist minister, had preached in the Red River section of northeast Texas at the house of a Mr. Wright, and he organized a church the following year at Jonesboro. In 1817, Stevenson preached with another Methodist minister, Henry Stephenson, on the Sulphur Fork of Red River. Although various ministers continued preaching in the Red River area, it was several years

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[12] Ibid., p. 62.

before their efforts appear to have produced permanent results.[13]

While there are indications that William Stevenson also preached in the East Texas town of Nacogdoches in 1817, it is not positively known whether he or Stephenson first preached in the area west of the Sabine. In 1824, Stevenson petitioned Austin for permission to preach in his colony. But, Austin rejected Stevenson's request explaining that "if a Methodist, or any other preacher, except a Catholic, was to go through this country preaching I should be compelled to imprison him."[14] A short time later, Henry Stephenson preached what is believed to be the first protestant sermon west of the Brazos to a group of four families near San Felipe. The meeting was held in secrecy, however, and Austin did not learn of the minister's preaching until after he had left the colony.[15]

Austin was not opposed solely to Methodist preaching, but to the public exercise of protestant worship in general. His opposition to the public exercise of any religion other than the Catholic was based on his desire to keep the peace

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[13]Macum Phelan, A History of Early Methodism in Texas: 1817-1866 (Nashville: Cokesbury Press, 1924), pp. 12-19.

[14]Red, Colonists and Religion, p. 75.

[15]Phelan, Methodism in Texas, pp. 33-35.

with Mexican authorities. In regard to Stephenson's preaching, however, Austin made the following statement:

> The Methodist have raised the cry against me, this is what I wished for if they are kept out, or will remain quiet if here for a short time we shall succeed in getting a free toleration of all religion, but a few fanatics and imprudent preachers at this time would ruin us--we must show the Govt that we are ready to submit to their laws and willing to do so, after that we can with some certainty of success hope to have our privileges extended.[16]

While Austin was opposing protestant missionary endeavors in the colonies, he was at the same time exerting influence on his friends in the state and national congresses to secure toleration of public worship by protestants. But, it was not until 1834 that the restrictions to protestant preaching were eased and organized churches were permitted to exist in Texas.

Although the Methodist was the first protestant organization to send preachers into Texas, other protestant groups began arriving shortly after the establishment of the first colonies. In 1820, Joseph Bays, who was from Missouri and a friend of Moses Austin, became the first known Baptist to preach in Texas.[17] Shortly after his arrival, Bays held a meeting in the home of Joseph Hinds, about eighteen miles

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[16]Red, Colonists and Religion, p. 77.

[17]Baptist General Convention of Texas, Centennial Story of Texas Baptists (Dallas: Baptist General Convention of Texas, 1936), pp. 18, 19, 79.

from San Augustine. In 1823, while Austin was in Mexico City, Bays preached in San Felipe, the headquarters of Austin's colony. The Mexican and Roman Catholic authorities, however, resented his missionary activities, and he was arrested by order of the governor. But, while he was being taken to San Antonio for imprisonment, Bays was able to escape his captors and returned to Louisiana until after the revolution.

In early 1829, Thomas J. Pilgrim, a young school teacher from New York, organized at San Felipe the first Sunday school ever taught in Texas.[18] Pilgrim's Sunday school was so popular among the colonists that people attended from a distance of ten miles away. He used any books that were available and supplemented them with oral instructions. In addition to the class work, the young teacher delivered moral lectures to the colonists. When an unfortunate controversy between a citizen and a visiting Mexican brought the Sunday school to the attention of the Mexican authorities, however, Austin deemed it prudent to discontinue the school.[19]

In the meantime, however, Sunday schools had been established at Matagorda and at Wharton. According to Reverend J. W. D. Creath, "in the same year [1829] a similar school

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[18] Ibid., pp. 307-10.

[19] Ibid., p. 21.

was opened at Matagorda and the year following another on 'Old Caney' under the auspices of the members of the Baptist Church."[20] About the same time, a Sunday school was established by Mrs. Mary Helm in a settlement to the south of San Felipe. And, the first Methodist Sunday school was conducted in 1830 at the home of Mrs. Lucy Kerr, Washington County, by Alexander Thomson.[21]

Although protestant missionaries had begun to hold meetings and establish Sunday schools among the colonists, their efforts appear to have had only limited success. Thus, William Dewees wrote in 1831 from the Colorado River that...

> The people of this country seem to have forgotten that there is such a commandment as 'Remember the Sabbath day and keep it holy.' This day is generally spent in visiting, driving stock, and breaking mustangs. There is no such thing as attending church, since no religion except the Roman Catholic is tolerated, and we have no priests among us. Indeed, I have not heard a sermon since I left Kentucky, except at a campmeeting in Arkansas.[22]

But, two years later, the first Baptist church in Texas was organized by Daniel Parker, a Primitive Baptist minister from Illinois.[23] When Parker visited Texas in 1823, he found that the Mexican laws prohibited any protestant from organizing

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[20] Red, Colonists and Religion, p. 70.

[21] Phelan, Methodism in Texas, p. 38.

[22] Red, Colonists and Religion, p. 16.

[23] Baptist General Convention of Texas, Texas Baptists, p. 21.

a church in Texas. According to his construction of the Mexican laws, however, there was no law forbidding the immigration of a church already organized. Therefore, Parker returned to Illinois, organized "The Pilgrim Church of Predestinarian Regular Baptists," and came back to Texas with the entire church in 1833. And, the following year, March 1834, a Primitive Baptist church was organized on the Colorado River several miles below the present town of Bastrop.[24]

In 1829, Sumner Bacon, a Presbyterian, came to Texas and acted for several years as a colporteur among the colonists. In the spring of 1832, Bacon and the Reverend N. J. Alford, a Methodist, held a meeting for two days in Shelby County near Milam. Two years later, Bacon was joined by Benjamin Chase, agent of the American Bible Society, and they traveled together for several months along the "King's Highway," and in Austin's and DeWitt's colonies.[25]

In May 1833, a camp meeting was conducted by James P. Stevenson at Milam, near Nacogdoches. On September 3, 1834, a camp meeting was held on Caney Creek, and the following year another camp meeting was held at the same place. The holding of the meetings was justified by the ministers on

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[24] Ibid., pp. 21-22.

[25] William Stuart Red, A History of the Presbyterian Church in Texas (Austin: Steck Company, 1936), p. 2.

the grounds that the government of Mexico had violated the constitution of 1824, therefore, absolving the people from their oaths to support the constitution which forbade the exercise of any other religious worship than that of the established church.[26]

During the ten years preceeding the revolution with Mexico, Texas had been rapidly settling up with American families. Many of these early settlers had been members of Methodist, Baptist, Presbyterian, and other churches in the United States, and probably most of the families continued to hold, and to some degree exercise, the faith which they brought with them. It is certain that these families wielded much influence on the moral life of the communities in which they settled. And, they attracted the first preachers who came into communities where the settlers lived, and thus began to form among themselves the first churches.

But, the settlers found their desire for just laws and religious freedom to be in conflict with the dictatorial centralist regime which had risen to power in Mexico under Santa Anna. Thus, Sam Houston, in his departmental orders from Nacogdoches in October 1835, stated:

> Our only ambition is the attainment of national Liberty --the freedom of religious opinions and just laws. To acquire these blessings we solemnly pledge our persons,

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[26]Red, Colonists and Religion, p. 82.

our property, and our lives.[27]

And, Austin, in a letter to Houston, wrote: "I wish to see Texas free from the trammels of religious intollerance [sic], and other anti-republican restrictions."[28] In March 1836, Austin delivered an address in which he stated: "Our object is freedom--civil and religious freedom...Our cause is the cause of light and liberty, of religious toleration and pure religion."[29]

In the meantime, a convention attended by representatives of various colonies was meeting at Washington-on-the-Brazos to form a new government and declare independence from Mexico. The declaration of independence spoke of the army and priesthood as being "the eternal enemies of civil liberty, and ever ready minions of power, and the usual instruments of tyrants." It characterized as "cruel alternatives" the choice of abandoning "homes acquired by so many privations, or submitting to the most intolerable of all tyranny, the combined despotism of the sword and the priesthood." The Mexican government, continued the document, "denies us the right of worshiping the Almighty according to the dictates of our consciences, by the support of a National religion"

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[27] Ibid., p. 90.

[28] Ibid.

[29] Ibid.

which is intended "to promote the temporal interests of its human functionaries rather than the glory of the true and living God."[30]

Although itinerant protestant preachers had begun their work during the colonial period, it was not until after Texas had gained its independence that a well-organized missionary program was launched in the republic. The news of the decisive battle of San Jacinto first reached the General Conference of the Methodist Episcopal Church while in session at Cincinnati, Ohio, in May 1836.[31] Three years later, the General Conference helped them organize the Texas Conference of Methodist Episcopal Church at Rutersville, in Fayette County. In 1837, Z. N. Morrell, a Baptist minister from Tennessee, organized the first regular Missionary Baptist church in Texas at Washington-on-the-Brazos.[32] And, the Texas Presbytery of the Cumberland Presbyterian Church was organized at the home of Sumner Bacon near San Augustine in November of the same year.[33]

Thus, following the Revolution of 1836, protestant

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[30]Gammel, Laws of Texas, I, 1063-66.

[31]Phelan, Methodism in Texas, pp. 70, 147-48.

[32]Baptist General Convention of Texas, Texas Baptists, p. 25.

[33]Red, Colonists and Religion, p. 101.

missionaries began coming into the new republic in increasing numbers. Most of these churchmen brought with them such practices as protracted meetings, basket meetings, and camp meetings which had been developed and tried for more than a century in the United States. And, they advocated a stricter observance of Sunday, which had for so long been neglected by the colonists.[34]

But, many of the children of the early settlers who became of age while Texas was independent had little or no religious training, and many of their elders had not heard sermons for several years. One Methodist minister, the Reverend Abel Stevens, reported to the Christian Advocate and Journal in 1839 that many "backslidden" members of his denomination were scattered throughout the new republic. He attibuted their spiritual decline to the long distances members must travel to worship with members of like faith, the lack of religious teachers, and the general failure to observe the "Sabbath."[35] By 1834, the Reverend Charles Gillet, a Protestant Episcopal minister, listed the failure to observe Sunday among "the national sins" that were being

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[34]Rupert N. Richardson, Texas: the Lone Star State (2nd ed.; Englewood Cliffs, N. J.: Prenctice-Hall, Inc., 1958), pp. 176-77.

[35]William Ransom Hogan, The Texas Republic: A Social and Economic History (Austin: University of Texas Press, 1969), pp. 192-93.

committed.[36]

The failure to observe Sunday as a day of rest and worship was the general rule throughout the new republic. The City of Houston, however, shortly after being incorporated in 1839 by an act of the Congress of the Republic, passed the first known Sunday law of any kind in Texas. The passage of the Houston ordinance, which was designed to prohibit the sale of malt liquor on Sunday, was probably the result of two major factors. First, the protestant missionaries, as well as the early settlers, who came into Texas from the United States, brought with them many of the religious customs and practices which they had been accustomed to in America. Therefore, the religious leaders who came to Texas, believing there was need for a stricter observance of Sunday, undoubtedly advocated laws similar to those in the United States restricting "worldly business" on the "Lord's day."

Another possible reason for the passage of the Houston blue law ordinance was an attempt by local ministers and religious leaders to focus public attention upon the problems of vice in the former capital city. In 1837, one Methodist minister observed:

> In this capital of the new Republic there is much vice --gaming, profanity, and drunkenness the most conspicuous. Houston is now ten months old, with eight hundred

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[36] Ibid., p. 193.

> inhabitants, good State House, many stores, and a vast number of doggeries [saloons].[37]

The following year Audubon, the famous naturalist, reported from Houston

> The merchants seemed to be doing much business; but the saloons--and of these there were a large number--seemed to be doing the heaviest business in the place; everybody seemed to patronize them.[38]

When ministers of the Gospel began viewing with alarm the increasing number of gambling houses and grogshops in Houston, however, they responded by preaching services against vice in the city.[39]

Consequently, the Houston blue law ordinance stated:

> If any person or persons shall, on Sunday, in any public house, room, building or inclosure [sic], or in any storehouse or bar-room, in said city, sell, or furnish for use any spirituous vinous or malt liquor of any kind, such persons shall be deemed guilty of a misdemeanor, and shall pay a fine of not less than $20 nor more than $50, for each and every such offense, to be recovered with costs, as in cases of other breaches of the city ordinances.[40]

Later, in 1859, the first known Texas court case involving the violation of a blue law occurred and this Houston ordinance was upheld as being constitutional by the state courts.

Peter Gabel, a Houston lager-beer distiller and seller,

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[37] Phelan, Methodism in Texas, p. 76.

[38] Ibid., p. 95.

[39] Hogan, The Texas Republic, pp. 203-04.

[40] Gabel v. City of Houston, 29 Tex. 335 (1867).

was fined twenty dollars for illegally selling liquor to customers at his brewery on March 6, 1859.[41] The fine was contested by Gabel in court, however, on the grounds that the city ordinance was unconstitutional and not authorized by the city charter. Gabel further contended that the ordinance prohibited only the selling of "malt liquor" on Sunday and did not apply to the sale of "lager-beer." But, Gabel's conviction was upheld by the state District Court of Harris County as being constitutional.[42]

Judge A. P. Thompson, dissenting from the majority opinion in the lower court, said

> The ordinance is evidently an ordinance for the sole purpose of having the Christian Sabbath enforced by city authority; for if the police of the city required such an ordinance, it would require the prohibition of the act on every day.[43]

The judge further stated that "The constitution forbids the passage of any law on the subject of religion, other than to protect its free exercise, or public worship from interruption." And, if any Sunday law can be passed in favor of Christians, then "by parity of reason a Saturday law can be passed for the favor of Jews, and so for other sects."[44]

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[41] Ibid., p. 338.

[42] Ibid., pp. 338-39.

[43] Ibid., p. 340.

[44] Ibid.

The Texas Supreme Court in sustaining Gabel's conviction seven years later, however, noted that

> Peter partook of the notion quite prevalent among a large and influential class all over the United States, that whatever may be lawfully done on week days may be done on Sunday.[45]

The court further stated that the ordinance

> conduces to the good order and tranquillity of a city when it enforces obedience to the rules of sobriety and decency within its limits even more rigorously upon Sunday than other days; for the people, from custom if not from law, desist upon that day from labor, and observe it as a day of rest.[46]

While noting that the ordinance did not deprive any inhabitant of Houston of any religious rights and privileges guaranteed by the constitution, the court stated:

> That there is nothing in the constitution of the United States or of this state to prevent the legislature from forbidding the pursuit of worldly business upon Sunday, has been decided in a number of states.[47]

Meanwhile, the first known state blue law had been introduced into the Texas Legislature. On November 12, 1861, Senator Robert H. Guinn, of Cherokee County, introduced a bill into the Ninth Texas Legislature to prevent "vice and immorality on Sunday."[48] But, Guinn's bill apparently died

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[45] Ibid., p. 337.

[46] Ibid., p. 343.

[47] Ibid., p. 347.

[48] James M. Day, ed., Senate Journal of the Ninth Legislature of the State of Texas, November 14, 1861-January 14, 1862 (Austin: Texas State Library, 1963), p. 40.

in the Judiciary Committee, and the Sunday issue did not come up again until the next regular session of the legislature two years later. In 1863, the Tenth State Legislature passed the first state Sunday law at a time seemingly inauspicious to the passage of legislation of this character. The Sunday bill, which was introduced by Rice Maxey, senator from Lamar and Hopkins counties, was entitled "An Act to Punish Certain Offenses Committed on Sunday."[49] The Maxey bill was passed by the Senate on November 23, 1863, and finally became law when passed by the House and signed by the governor on December 16, 1863.

Thus, the first state blue law, passed by the legislature while state courts were still ruling on the constitutionality of the Houston ordinance prohibiting the sale of malt liquor on Sunday, was designed to restrict Sunday labor and recreation. Section (1) of this act made it a misdemeanor for any person of the state to compel his "slaves, children, or apprentices, to labor on the Sabbath,the day known as Sunday" and provided for a fine of not less than ten nor more than fifty dollars for each offense.[50] The statute provided exemptions, however, for household duties,

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[49]James M. Day, ed., Senate Journal of the Tenth Legislature of the State of Texas, November 3, 1863-December 16, 1863 (Austin: Texas State Library, 1964), pp. 63, 84-88.

[50]Gammel, Laws of Texas, V, 690.

works of necessity and charity, and "work done on sugar plantations during the sugar making season." In addition, the law exempted any work that was deemed necessary to save a crop.[51] Section (2) of the act made it a misdemeanor for any person to engage in horse races, sell intoxicating liquors operate any nine or ten pin alley or billard table, or engage in match shooting on Sunday. And, anyone found guilty of violating this section of the act was subject to a fine of not less than fifteen nor more than fifty dollars.[52]

Less than two years after the passage of the first state blue law, Texas was faced with matters of reconstruction and the unsolved problems of the Civil War. When General Gordon Granger, a representative of President Johnson, arrived at Galveston in June 1865, he proclaimed the authority of the United States over Texas and declared that all acts of the Texas government since secession were illegal. One month later, A. J. Hamilton came to the state to serve as provisional governor. Thus, for the next five years the policies of the state government were dictated by the federal government.

Although all the acts of the state government subsequent to the ordinance of secession were declared invalid,

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[51] Ibid.

[52] Ibid., p. 691.

Governor Hamilton gradually adopted the policy of recognizing as valid those acts and laws which were not in conflict with the laws of the United States. Therefore, before the Constitution Convention of 1866 was called, the provisional authorities had made a distinction between acts in support of the rebellion and those which had been for the purpose of regulating the private relations of the people. Even though this distinction had been recognized, it was necessary for the convention to embody it in the organic law of the land in order that the permanence of the principle could be insured.[53]

The ordinance passed on the subject was an omnibus bill which covered a wide range of related subjects. Consequently, all laws which had been enacted by the state legislature after February 1, 1861, and which were not in conflict with the constitution and laws of the United States nor with the constitution of Texas or the proclamations of the provisional governor, were declared to be in full force as laws of the state.[54] At an election on the fourth Monday in June, the qualified voters of the state adopted the constitution of 1845 with the amendments as proposed by the Constitutional Convention.

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[53]Charles William Ramsdell, Reconstruction in Texas, paperback reprint, (Austin: University of Texas Press, pp. 103-04.

[54]Ibid., p. 104.

Thus, the blue law of 1863 was neither amended nor repealed by the Convention of 1866. In November, however, the Eleventh Texas Legislature amended the law to provide for additional exemptions and restrictions. Section (1) of the act was amended to provide exemptions for steamboats, rail-cars, wagon trains, common carriers, stage carrying the United States mail, persons traveling on the highway, ferrymen, keepers of toll-bridges, and keepers of hotels and livery stables. For the first time, however, exemptions were made for

> any person who conscientiously believes that the seventh, or any other day of the week, ought to be observed as the Sabbath and who actually refrains from secular business and labor on that day.[55]

The act was further amended to prohibit the hunting of game on Sunday and anyone found guilty of such an offense was subject to a fine of not less than five nor more than twenty-five dollars. And, Section (4) of the act prohibited any merchant, grocer, trader, or dealer in stock, wares, or merchandise to trade or barter goods on Sunday.[56]

But, by the end of 1866 Presidential Reconstruction was obviously doomed, and the blue law of 1863, including the amendments added by the Eleventh Legislature, fell with the

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[55]Gammel, Laws of Texas, V, p. 1140.

[56]Ibid., pp. 1140-41.

failure of the Constitution of 1866.[57] Being influenced by the failure of the South to fully enact President Johnson's reconstruction policy and by the slanted reports of the radical press on conditions in the South, northern voters in the November election returned a more radical Congress.[58]

Three months later, on March 2, 1867, Congress passed over the president's veto a law which abolished Presidential Reconstruction and set up its own plan for the reconstruction of the former Confederate states. Under Congressional Reconstruction, Congress placed the South under strict military rule until it should comply with certain prescribed requirements, including the adoption of state constitutions acceptable to Congress. In order to accomplish this purpose, the Texas Reconstruction Convention met at the Capitol in Austin on June 1, 1868.[59]

While it is questionable whether the Congressional Reconstruction acts voided the Sunday law statutes of the Eleventh Legislature, the Convention of 1868 did pass an ordinance repealing the state's first blue law.[60]

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[57] Britain R. Webb, A Digest of Decisions on the Criminal Law of Texas (St. Louis: Gilbert Book Company, 1880), p. 278.

[58] Ramsdell, Reconstruction in Texas, p. 145.

[59] Ibid., pp. 145-46, 200.

[60] Gammel, Laws of Texas, VI, p. 41.

On August 13, Julius Schuetze, a member of the Convention, introduced a declaration repealing the Sunday statutes which had been passed by the Tenth and Eleventh Legislatures. In addition, the declaration call for all prosecutions and judicial proceedings pending in Texas courts for violation of the state blue law to be abandoned. Although the number of such cases is not known, the ordinance was passed on August 20 by a vote of forty-nine to eleven.[61]

Following the establishment of civil authority in Texas, however, the Twelfth Legislature, on December 2, 1871, re-enacted the state blue law which had been repealed only three years earlier. Although the act of 1871 contained the same basic provisions of the earlier statute, it prohibited Sunday selling between the hours of 9 A. M. and 4 P. M.; but the law permitted the sale of drugs and medicine throughout the day.[62] In 1883, an amendment was added which exempted the sale of burial or shrouding material, newspapers, ice, milk, and sending and receiving of telegraph messages, and the sale of provisions by dealers before 9 A. M. In addition,

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[61] Journal of the Reconstruction Convention, Austin, Texas, June 1, 1868 (Austin: Tracy, Siemering and Co., 1870), First Session, pp. 725, 813-14. Microfilm copy, Southwest Collection, Texas Tech University, Lubbock, Texas.

[62] See Appendix I. In 1879, the Sixteenth Legislature amended and revised the Sunday laws as Articles 183-187 of the Penal Code. These amendments made no material change in the laws, but were designed to effect a more thorough and proper enforcement of them.

the agents and employees of merchants were made subject to prosecution for illegally selling prohibited merchandise on Sunday.[63]

Most of the early charges for violation of the state Sunday law were against merchants and saloon-keepers. In March 1884, for example, the San Antonio Daily Express reported that sixty-four indictments were being issued against San Antonio saloon-keepers for the blue law violations. While the grand jury had issued indictments against persons charged with selling alcoholic beverages on Sunday, according to the Express, the jury "omitted to indict persons persuing any other vocation or business."[64] The general disregard for strict enforcement of the Sunday law by San Antonio officials is shown by the fact that the two justices issuing the warrants were being charged themselves with neglect to enforce the Sunday law statutes.

Three years later, in 1887, the state legislature again amended the blue law statute making it a misdemeanor to keep open public amusements on Sunday where an admission fee was charged. The term place of public amusement included circuses,

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[63]See Appendix II. Although previous acts and amendments had used the terms "Sabbath" and "Lord's Day," later statutes omitted these religious terms and substituted the word "Sunday" to conform to court rulings made in various states upholding blue laws on the grounds that such laws protected public health under the police power of the state.

[64]San Antonio Daily Express, March 30, 1884, p. 5.

theatres, variety theatres, and most other amusements charging admission fees on Sunday. Although certain kinds of businesses were also prohibited by the law, the keepers of drug stores, boarding houses, restaurants, barber shops, bath houses, ice dealers, and telegraph and telephone offices were not included.[65]

When the celebration for the new Capitol dedication occurred at Austin in May 1888, the Attorney General, James S. Hogg, prevented a Mexican band from presenting a concert at the ceremonies under the provision of the recently passed law prohibiting public amusements on Sunday. The Mexican band had planned to give a concert on the drill grounds as part of the dedication ceremonies for the new Capitol building. In a letter to the County Attorney, H. B. Barnhart, the Attorney General described the proposed concert as being "about to grow into flagrant violations of the law."[66] Attorney General Hogg instructed Barnhart "to use all lawful efforts, and by the assistance of the Sheriff and Constables and their forces prevent that concert and other violations of the law at the "drill grounds" on the tomorrow."[67]

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[65] See Appendix III.

[66] Robert C. Cotner, ed., Address and State Papers of James Stephen Hogg (Centennial ed., Austin: University of Texas Press, 1951), p. 54.

[67] Ibid., p. 55.

In April 1891, the state Sunday law was amended by the Twenty-Second Legislature while Hogg was serving as Governor of Texas.[68] Although the act was presented to the Governor for his approval on the thirteenth day of April, it was not signed by him nor returned to the state legislature with his objections; nor were any objections filed by him after the adjournment of the legislature within the time prescribed by the constitution. The act, therefore, became a law without his signature.[69]

The final major issue involving the Texas blue law to come before high state courts in the nineteenth century involved a liquor violation by G. L. Searcy of Karnes County, Searcy was convicted for selling liquor on Sunday and was assessed a fine of twenty dollars for violating the state blue law. The conviction was appealed to the Court of Criminal Appeals on the grounds that the law was unconstitutional since the exemption of drug stores was a personal exemption which "authorizes them to deal in goods, wares and merchandise that other citizens are inhibited from dealing in."[70]

In an opinion by Judge J. Henderson, however, the court upheld the law as constitutional since "The exemption...is

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[68]See Appendix IV.

[69]Gammel, Laws of Texas, X, p. 176.

[70]Searcy v. State, 51 S. W. ed. 1120 (1899).

in favor of the article sold by the persons who deal in such articles."[71] The court further stated that the legislature was authorized, under its police power, to exempt certain articles as being common necessities. "Drugs and medicines were very properly placed in the category, and the keeper of a drug store is authorized to sell drugs and medicines, but not other goods that do not belong in this class."[72] The court held that whisky was not placed in the category of drugs or medicines, "but is regarded as a beverage, and comes within the inhibited articles."[73]

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[71] Ibid.

[72] Ibid.

[73] Ibid.

CHAPTER III

RELIGION AND ECONOMICS

While during the nineteenth century the main issue under the Texas blue law was the illegal sale of alcoholic beverages on Sunday, during the first quarter of the twentieth century the blue law controversy centered on the legality of Sunday movies and baseball games. State courts ruled that movies shown on Sunday were illegal under the statute prohibiting certain amusements where an admission fee was charged, but the statute did not apply to baseball games or similar sports.

In 1910 the Court of Criminal Appeals ruled for the first time on the legality of Sunday baseball games. Fred Roquemore, the manager and proprietor of a place of public amusement, was charged in a Nacogdoches corporation court for permitting a baseball game to be played in his ball park on Sunday, July 10, 1910. On appeal, the Court of Criminal Appeals reversed the lower court's ruling that Roguemore had violated the state blue law which prohibited amusements on Sunday where an admission fee was charged.[1]

Justice J. Ramsey, while noting the religious character of the statute, stated the court was not concerned

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[1] Ex Parte Roquemore, 131 S. W. 1101-1105 (1911).

> with the issue or question as to whether the Legislature could enact a law prohibiting baseball on Sunday, but rather with the question as to whether they have so enacted.[2]

Since "baseball" was not specifically named in the statute, the court said the question concerned the meaning of the general term "'and such other amusements as are exhibited and for which an admission fee is charged.'"[3] In the opinion of the court, the term referred to "amusements of a like or similar character" as those specifically enumerated in the statute.[4]

Basing its opinion on previous court decisions in other states, the court ruled that baseball was not prohibited by the statute, which provided for the punishment of a person convicted of horse racing, cockfighting, or playing cards on Sunday. Therefore, the court took the generally accepted position that the legislature did not enact a provision so drastic in terms as to make the playing of all games on Sunday misdemeanors without regard to their character and with no limitations or reservations regarding the place or the circumstances under which they might be played.[5]

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[2] Ibid., p. 1103.

[3] Ibid.

[4] Ibid.

[5] Ibid.

By February 1915, the blue law controversy had changed from the issue of baseball games to the question of whether Sunday movies were permitted by the law restricting certain kinds of Sunday amusements. When J. W. Parks, representative from Dallas, introduced into the state legislature a bill which would permit theaters to be open on Sunday at the option of the city in which they operated, strong reactions to the proposed legislation was voiced by several religious leaders.

Specifically, the Park's bill would have granted cities of over five thousand inhabitants power to regulate and prohibit movies on Sunday.[6] The Reverend J. Frank Norris, a flamboyant and controversial minister of the First Baptist Church in Fort Worth, along with several other ministers,[7] was granted the privilege of using the Hall of the House of Representatives for the purpose of holding a meeting in opposition to the proposed bill.[8] Norris declared that "We are

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[6]Texas Legislature, House Journal, 34th Legislature, regular session (1915), p. 145.

[7]The other ministers named in the resolution permitting the use of the Hall included: W. D. Bradfield of the Travis Park Methodist Church of San Antonio, A. F. Bishop of the Austin Presbyterian Church, Sam P. Hay of the First Methodist Church of Dallas, William Caldwell of the First Presbyterian Church of Fort Worth, and F. W. Hutt and P. E. Riley also of Fort Worth.

[8]The Park's bill, House Bill No. 182, was later defeated by a vote of 72 to 42.

here to fight the Sunday opening bill until hell freezes over forty feet thick and it can be skated upon in July."[9]

In order that both sides of the issue could be heard, Representative Don H. Biggers of Lubbock introduced a resolution which offered the Hall of the House of Representatives to R. Louis Routt, a Seventh-day Adventist minister[10] who not only opposed movies in general but also any kind of closing legislation. Biggers, who believed "moving picture shows are putting too much cheap, demoralizing trash on the screens,"[11] stated that such a request was justified since Norris and several other ministers had used the Hall to speak in opposition to the bill. An amendment was immediately added to Bigger's resolution, however, permitting another minister, the Reverend R. P. Shuler of the University Methodist Church in Austin to speak at the same time.

The scheduled debate began at 8:00 P. M. on Monday, February 8, 1915, in the House and resulted in hoots and jeers directed at the Adventist minister from a number of university students who came to hear the debate on Sunday movies.

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[9]"'It Will be Cold in Hell When We Give Up Fighting,' Says Sunday Show Opponent," Austin American, Feb. 3, 1915.

[10]Routt was from Keene, in Johnson County, which was the headquarters of the Southwestern Union Conference and the North Texas Conference of Seventh-day Adventists.

[11]Texas Legislature, House Journal, 34th Legislature, regular session (1915), p. 881.

But, the actions of the students, which prevented him from being heard several times were strongly condemned by several members of the House.[12]

Routt asserted that preachers oppose the movies because the shows were in competition with the ministers. And, in his opinion, Sunday legislation is "class legislation" which is out of harmony with the constitution of the United States and of Texas. He stated that

> a law establishing Sunday as a day of religious observance would be unconstitutional, just as would a law making the seventh day a day of observance and in the same ways Sunday laws are unconstitutional.[13]

Routt asked if Sunday legislation made a man a better person. He stated that he believed in a day of worship, but that it makes hypocrites out of people when they were forced to worship whether they want to or not. The minister pointed out that California had no Sunday law, "and yet California is just as good as any state in the union."[14]

Routt also accused J. Frank Norris of being a "political preacher" who had recently entertained the legislature with "his wonderful vaudeville stunts" and had appeared before the legislature "in the discharge of his pastoral duties."

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[12]"Disorder Prevails as Pastors Debate on Keeping Sabbath," Austin American, Feb. 9, 1915, p. 6.

[13]Ibid.

[14]Ibid.

In addition, Routt, apparently referring to a movie house owned by the Baptist minister, said that "one of J. Frank Norris' Sunday moving picture shows didn't bother me when I was in Fort Worth."[15] He pointed out that Norris had run the movie in opposition to the other shows in the city. Routt said he was opposed to picture shows and did not personally attend them, but thought they should be allowed to run on Sunday as on any other day of the week.

Following the remarks made by Routt, the pastor of the University Methodist Church, R. A. Shuler, entered the debate. As he began his reply to Routt, students in the crowd arose and began to sing "The Eyes of Texas Are Upon You." Shuler asserted that the Adventist minister's entire address was a doctrinal argument. The pastor said that Sunday was set aside as a day of rest and worship because it was the day on which Christ rose from the dead. And, he pointed out that neither the United States Supreme Court nor any state court had ever held the sanctity of Sunday unconstitutional.[16]

Emphasizing mostly the secular side of the issue, the Methodist minister based his appeal for Sunday observance primarily on the grounds that man needs a day of rest from his labors. "Man's physical make-up," Shuler said, "demands

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[15] Ibid.

[16] Ibid.

one-seventh of the time to be spent in rest."[17] He said that the Sabbath is the friend of man, but that the "big industries" would work men on Sunday if they could. Although Shuler contended that the "Christian Sabbath" is one of the best friends of the laboring man, he accused the picture show industry of wanting to disregard Sunday as a day of rest. "I think picture shows are all right, and hope to see the day when they will take place with [sic] the schools, but I never hope to see the schools open on Sunday,"[18] said Shuler.

The minister emphasized that he was not fighting the picture shows, but that he did oppose the commercialization of Sunday. According to Shuler "Nobody is especially interested in whether Saturday or Sunday is the Sabbath day" and he refused to argue on that point, further than to say that "Sunday is recognized by law."[19]

In answer to Routt's accusation that J. Frank Norris was a "political preacher."[20] Shuler said that Norris was sent

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[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] Norris's fight for a stricter observance of Sunday temporarily came to an end in 1926 when he was charged with the murder of a lumberman who was shot to death in the church office and whose death created one of the biggest scandals in Texas history. E. Ray Tatum, Conquest or Failure? Biography of J. Frank Norris (Dallas: Baptist Historical Foundation, 1966), pp. 220-41.

to Austin by the Christian Men's Union, a religious organization in Fort Worth, and that he did not come to the capital by his own involution.

Near the end of his debate, Shuler questioned Routt about the beliefs and doctrines of the Seventh-day Adventists and why blue laws were so strongly opposed by the Adventists. A short time later, Shuler ended his address by stating that the abolition of Sunday laws would result in the downfall of the Christian civilization. Following his address, the minister was cheered for several minutes by the audience, but when Routt began his reply to Shuler, the crowd jeered and shouted, drowning out his voice and yelling for him to speak louder.[21] Later, the Park's bill was defeated by a vote of 72 to 42,[22] and it was not until 1931 that a law was passed by the legislature which would permit movies to be shown on Sunday.

One year after the Routt-Shuler debate, the State Court of Criminal Appeals ruled on the constitutionality of Sunday movies. Dad Spooner of Tom Green County was arrested for giving performances at his theater in San Angelo on Sunday, January 2, 1916.[23] At the entrance of his theater a large

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[21] Austin American, Feb. 9, 1915, p. 6.

[22] Texas Legislature, House Journal, 34th Legislature regular session (1915), pp. 880-81.

[23] Spooner v. State, 182 S. W. 1121 (1916).

sign was displayed which read "Free Contribution," "Pay What You Wish," "Benefit Carlsbad Sanitarium."[24] No tickets were sold nor were admission fees demanded for seeing the movie. From his gross receipts which totaled $33.30, Spooner deducted his expenses and donated the balance of $18.55 to the inmates of the tuberculosis sanitarium at Carlsbad, near San Angelo. Nevertheless, Spooner was arrested and fined the minimum punishment for violating the statute prohibiting amusements on Sunday. On appeal, in Spooner v. State the Court of Criminal Appeals ruled that Sunday movies violated the state blue law even though no admission fee was charged and the proceeds from voluntary collections were turned over to a charitable project. The court also stated "There can be no question but this was a plain and direct violation of the statute, and his conviction and punishment were proper."[25]

Five years later, in 1921, the same court again ruled against Sunday movies even though the pictures, entitled "Under Four Flags," were designed to stimulate patriotism by showing incidents of the preparation and participation of the United States in the war with Germany.[26] J. J. Hegman,

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[24] Ibid.

[25] Ibid.

[26] The pictures were prepared by a special committee which had been selected by President Wilson during World War I.

owner and operator of the Queen Moving Picture Show in Austin, was convicted and fined twenty dollars in a Travis County court for operating a moving picture show on Sunday.[27] Hegman appealed his conviction to the state Court of Criminal Appeals on the grounds that the show, "Under Four Flags," being a patriotic picture, was not the kind of amusement forbade by the statute prohibiting amusements on Sunday where an admission fee was charged. The defendant contended that not every amusement where an admission fee was charged on Sunday was a violation of the law. And, an amusement

> to which an admission fee is charged on Sunday and which is not a circus, a theater, not a variety theater, or is not of the same kind, character, nor nature or genus, as a circus theater, or variety,[28]

is not a violation of the law.

The court ruled, however, that no evidence was presented to indicate the show was

> different from the other regularly licensed and operated moving picture shows, nor to combat and proposition that its continual business was to amuse, instruct, and entertain the public.[29]

Impersonation of the actions of other persons, said the court, is drama which is defined to be something "intended to exhibit episodes of human life, or depict a series of grave or humorous

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[27] Hegman v. State, 227 S. W. 954 (1920).

[28] Ibid., p. 955.

[29] Ibid.

action of more than ordinary interest, tending toward some stricking result."[30] And further, it is generally spoken and represented by actors on the stage, with the principal divisions being either tragedy or comedy. The court pointed out that although the original episode attempted to be reproduced was a real occurrence, whether a tragedy or a comedy in actual life, would not change the fact that its reproduction would be a play, or drama.[31] The court concluded that an attempt to reproduce either by moving pictures or by live actors the acts and deeds of another person, for which an admission fee is charged "is of the class, kind, and species forbidden" by the statute and the "trial court did not error in refusing to give the special charge requested."[32] Although the statute contained no definition of a theater, the court ruled that if by construction, fitting, and equipment a building be a theater, or if it is called a theater and is used to give a play, a drama, or any other show to which an admission fee is charged, then it is declared to be a place of public amusement.[33]

In a strongly worded statement Justice P. J. Davidson

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[30] Ibid.

[31] Ibid.

[32] Ibid., p. 956.

[33] Ibid., pp. 956-57.

dissented from the court's ruling in the Hegman case. Davidson contended the picture, "Under Four Flags," was shown for patriotic purposes and should not be classified as an "amusement." He said

> There was behind it the highest possible patriotic emotions and motives for the purpose of bringing before our people more clearly incidents of that terrific war struggle, and awaken stronger interest by portraying to them visibly on the screens the tragic events along the battle lines, and a realization of the fearful ordeals through which their relatives, sons, brothers, husbands, and friends were passing.[34]

The picture, according to the justice, was an official appeal to patriotic Americans and was not a theatrical play, a variety vaudeville exhibition, or a circus performance.

Although the legislature had refused to enact a bill permitting Sunday movies to be shown, in 1925 the blue law statute was amended to permit the sale of gasoline and lubricants on Sunday.[35] Responding to strong public opinion favoring the sale of gasoline and lubricants the act stated:

> The fact that motor vehicles are an absolute necessity and are universally used on Sunday as well as other days and the fact that under present laws gasoline and lubricants cannot be sold on Sunday creates an emergency and an imperative public necessity...[36]

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[34] Ibid., p. 959.

[35] Texas, Laws, Statutes, etc., General Laws of the State of Texas, 39th Legislature, Regular Session, 1925, Ch. 139, p. 347.

[36] Ibid.

This was the first time the state legislature had used the term "emergency" to permit otherwise prohibited items to be sold on Sunday. And, its recognition was the beginning of a series of conflicts involving "emergency purchases" which will be discussed later in Chapter Six.

The blue law controversy in 1930 again involved the issue of Sunday movies. John H. Sayeg, the operator of the Grand Theater in Ennis, was fined thirty-five dollars under Article 286 of the Penal Code which made it an offense to keep open a place of public amusement on Sunday where an admission fee was charged. In front of the theater a sign was posted stating the regular admission fee was ten cents and thirty cents, but that "Today Your Free Will Offering" was being accepted for admission.[37]

Sayeg contended that since no admission fee was charged to see the show, he did not violate the Sunday law statute. He further claimed that Articles 286 and 287,[38] construed together, granted "special privileges to certain classes, and are therefore unconstitutional."[39] Under the terms of Article 287, Sayeg contended, a drug store operator could sell groceries, dry goods, and other items prohibited on Sunday, but

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[37] Sayeg v. State, 25 S. W. 2d. 866 (1930).

[38] See Appendices VIII and IX.

[39] Sayeg v. State, p. 866.

a dry goods merchant was prohibited from selling such items.

But, the Court of Criminal Appeals ruled that no such privilege was granted to a druggist under the statute. The high court said that the same claim had been made in Searcy v. State, and the court used the reasoning of Judge Henderson in the Searcy case to uphold Sayeg's conviction. The method used by the defendant for admission to his theater, the court said, was only "a subterfuge and evasion of the law which would not be countenanced."[40]

One year after the Sayeg case, the state legislature responded to strong public sentiment favoring Sunday movies by amending Article 287 to permit theaters to open for business after one o'clock P. M. on Sunday.[41] Senators Walter Woodul of Houston and W. A. Williamson of San Antonio introduced into the Forty-second Legislature Senate Bill 153 which was designed to

> repeal that portion of the State Law prohibiting the operation of moving picture shows and theaters on Sunday in this State in any incorporated city or town after one p. m., empowering the City Council or City Commissioners of such cities or towns by proper ordinance to prohibit or regulate the keeping open or showing of such moving picture shows or theaters on Sunday.[42]

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[40] Ibid.

[41] Texas Legislature, Senate Journal, 42nd Legislature, regular session, (1931), p. 114.

[42] Ibid.

The amendment offered by the Woodul-Williamson bill was similar to that of the Park's bill which had been defeated by the legislature only fifteen years earlier.

In 1933 a new dimension was added to the Texas blue law when the Forty-third Legislature prohibited boxing and wrestling matches to be held on Sunday where an admission fee was charged.[43] Although the law prohibiting Sunday boxing and wrestling was not significantly opposed, it did mark the beginning of a twenty-five year period which, in general, involved only nominal opposition to the state's blue law.

During this time, however, there appears to have been widespread disregard for the Sunday law and a lack of strict enforcement of the law by government officials. In addition, no new amendments were added to the law, and the few cases which did come before state courts involved litigation of a similar character to those cases already discussed. All of these circumstances regarding the blue law probably reflected the preoccupation of public opinion with matters concerning problems of the depression and World War II.

In the mid-twentieth century Texans generally regarded Sunday as a day to play golf, swim, or go to the ball park, rather than as a time to be spent in quiet religious observance. It was also a time in which the suburban husband's

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[43]Texas, Laws, Statutes, etc., General Laws of the State of Texas, 43rd Legislature, Regular Session, 1933, Ch. 241, p. 843.

use of the family car during the weekdays created the need of housewives to shop on weekends, including Sunday. And, large new shopping centers in the suburbs began to spring up all over the state, which were open for long hours to accomodate shoppers who hesitated to go to the traffic-jammed downtown areas.

By the latter part of the 1950's, however, visible changes began to appear. In 1956, for example, the Texas Court of Civil Appeals ruled that a sale which had begun on Saturday and finally consummated on Sunday was not illegal.[44] The Appeals Court ruling came as a result of a suit brought by Zales Jewelry of Amarillo to recover the balance due on a diamond ring which had been sold to C. H. Fraley almost four years earlier.

Fraley, who was from Borger, telephoned a Zales' representative in Amarillo on Saturday, October 25, 1952, and discussed trading in a diamond ring he had previously purchased from the store for a more expensive ring. Richard Hankin, the Zales' representative, asked Fraley to come to the store that afternoon and make a selection of the new ring. Fraley told the representative, however, that it was not convenient for him to go to Amarillo on Saturday, and he requested Hankin to let him make the selection on the following Sunday. The

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[44] Fraley v. Zales Jewelry, 289 S. W. 2d. 416 (1956).

representative told Fraley that Zales did not ordinarily show diamonds on Sunday, but since Fraley was an old customer, the store would be opened up on that day for his convenience.

The next day, on Sunday, October 26, 1952, the Zales' representative opened the store so Fraley could select the diamond of his choice. Fraley selected a $3,950 diamond and agreed to pay the balance of $2,200, which included the trade-in of a previously purchased ring, in monthly installments of $100 each. After the selection had been made, the salesman requested that the ring be left in the store so the jeweler could set the loose diamond the following Monday or Tuesday. When Fraley insisted that the diamond be set in the mounting that same day, however, the jeweler who set diamonds, Homer Damron, was asked to come to the store and set the diamond purchased. Damron set the diamond hurriedly, and at the jeweler's request, Fraley agreed to return the ring at a later date for rechecking and the making of minor adjustments.[45]

Although Fraley made six payments totaling $955, on his account with Zales, a $300 payment made by check was not honored because of "insufficient funds" in his bank account. After Fraley defaulted in his payments, representatives of Zales contacted him several times about paying the balance

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[45] Ibid., pp. 416-18.

that was due. Each time he was contacted, Fraley acknowledged that he owed the balance and promised to continue making his payments on the debt.[46]

When Fraley refused to pay the balance of his account, Zales Jewelry brought suit against him. The District Court in Hutchison County ruled in favor of the seller, and Fraley, contending the sale was illegal because it was consummated on Sunday, appealed his conviction to the Court of Civil Appeals. The high court ruled, however, that

> A contract which has not been fully closed on Sunday is not void because some of its terms may have been fixed on that day, or even because most of the business out of which the consideration of the contract has risen has been tranacted on that day.[47]

Chief Justice Pitts, speaking for the court, said that Fraley was bound to the terms of the sales contract not only because he had made six installment payments on the account, but also because he had discussed full payment of the balance and had promised several times to pay the account before challenging the validity of the contract. The court further ruled that although the negotiations for the sale of the ring had begun on Saturday and some of the details of the transaction had occurred on Sunday, the appellant was obligated to pay the remainder of the account since "by his subsequent

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[46] Ibid., p. 418.

[47] Ibid., p. 419.

acknowledgments and oral statements" he had "ratified, reaffirmed and renewed his promises to pay the account in full."[48]

Three years later, in January 1959, the Court of Criminal Appeals ruled on the final case involving a Sunday closing law to come before a high state court during the late 1950's. In Clark v. State, the Appeals Court upheld the ruling of a lower court which had convicted the defendant, a Bexar County businessman, for permitting his store to be open for business on Sunday. The court pointed out that the contention that conditions had changed were invalid since the legislature had amended the state Sunday laws six times since their original adoption.[49]

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[48] Ibid., pp. 419-20.

[49] Clark v. State, 319 S. W. 2d. 726-27 (1959).

CHAPTER IV

THE HOUSTON CONTROVERSY

Although most Sunday law violations prior to the Fraley and Clark cases involved only scattered individual offenses, during the 1960's mass violations became more prevalent. The first major confrontation with the blue law involving mass violations was in Houston in late 1960 and was the result of competition from the large discount stores and shopping centers with the local downtown merchants.

In an effort to curb Sunday business, the Houston Retail Merchants Association, on October 8, 1960, asked its members not to open for business on Sunday. Three days later, the Houston Automobile Dealers Association made the same request of its members.[1] But, in late November, a large new discount house, Globe Discount City, opened its store for business on Sunday despite strong protests from the local Retail Merchants Association and various religious groups. On Globe's first weekend of business, a crowd which was estimated at 100,000 shopped at the store and "bought like mad."[2]

Following Globe's decision to open for the entire weekend,

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[1] "Those Houston Blue Laws," Texas Observer, LII, No. 51 (1961), 8.

[2] "Is Sunday Selling Really Illegal?" Business Week, December 17, 1960, p. 62.

numerous other businesses also opened their stores on Sunday during the competitive Christmas season. One large department store, Joske's of Houston, which was a member of the Allied Stores Corporation, announced that it would keep its Gulfgate branch open on Sunday. Joske's insisted, however, that it was not competition from discount stores that forced its decision to open, but a desire to awaken the community to the problems of Sunday openings.

Although Joske's stayed open for only one weekend, it was enough to help create strong opposition from Louis Cutrer, the mayor of Houston. Mayor Cutrer, who was preparing his campaign for re-election to a third term,[3] released a tough legal decision which had been issued several months earlier by City Attorney Richard Burks. In the decision Burks made the following ruling:

> ...it is the recommendation of the city legal department that the State Sunday laws be enforced, inasmuch as the Texas courts have consistently held them to be constitutional.[4]

Believing that he had the support of most churches and public opinion in general, the mayor made the ruling public and urged retailers to observe the law on a voluntary basis.

Mayor Cutrer's efforts to rally support for Sunday closing, however, was met with stern opposition from members of

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[3]"Houston Blue Laws," p. 8.

[4]"Sunday Selling," p. 62.

the Seventh-day Adventist Church. The Adventists pointed out that they opposed the Sunday law because the fourth commandment says the seventh day is the Sabbath. They said that Saturday, not Sunday, is the seventh day of the week and that not all religions observe Sunday as the Sabbath.

Despite strong opposition from the Seventh-day Adventists and the large discount stores, the mayor announced on December 22 that he would begin enforcing the state's blue laws on January 8, 1961. The discount stores, apparently willing to comply with the law if the mayor would wait until after Christmas to begin enforcement, announced on January 4 that they would no longer stay open on Sundays. Mayor Cutrer, feeling that he was on safe ground, ordered the police department to begin operating a Blue Law Squad every Sunday.[5] to see that no illegal business was being conducted and to apprehend all violators of the law.[6]

But, N. Elmer White and Oral Shockey, joint operators of the White Electric and Lumber Company in Houston, announced that they would remain open on Sunday despite the mayor's ruling. They had discovered, like many other small hardware dealers, that they could do a large volume of business on

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[5]The Blue Law Squad varied in size from five to fifteen officers each Sunday. But, the squad's members can usually be found in each Monday's edition of the Houston Post from January 8 through August 1961.

[6]"Houston Blue Laws," p. 8.

Sunday. And, in an effort to organize opposition to opponents of Sunday opening, they helped form the Citizens for Seven Days of Freedom Committee.[7]

Meanwhile, the state Baptist headquarters in Dallas was urging Baptists throughout Texas to close their businesses on Sunday and to trade with others who would do the same. The request was made in a letter signed by L. H. Tapscott, secretary of the Texas Baptist Brotherhood Department,[8] to the presidents of brotherhood organizations in approximately 2,300 Baptist churches. The letter requested Baptist men to "do whatever seems wise and practicable to call attention to Sunday observance among the people of your community..."[9]

Tapscott emphasized that the letter did not advocate a "boycott" of businesses which remain open on Sunday, but said that "We only ask that Baptists trade with people who respect their employee's right to worship on Sunday."[10] He further stated that the Baptist men's organization did not plan any legal action to enforce the state blue laws, but that the organization was trying to create public sentiment against

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[8]The president of the Texas Baptist Brotherhoods was A. D. Pratt, a businessman from Lake Jackson, who was familiar with the efforts by various groups in Houston to have the Sunday closing laws enforced. Paul Cates to William G. Harper, telephone interview, December 10, 1970.

[9]"Baptists Ask Sunday Shutdown," Dallas Morning News, Jan. 5, 1961, sec. 4, p. 1.

business on Sunday.

While Texas Baptists were being urged to support the Sunday closing laws, the Houston Police Department, acting on instructions from Mayor Cutrer, put into operation Blue Law Squads to patrol various sections of the city. Believing that businesses would begin to comply with the blue laws voluntarily and thus lead to an end of the controversy, the mayor and Police Chief Carl Shuptrine began enforcing the laws against discount stores, automobile dealers, hardware stores, and lumber yards. On their first Sunday of operation only three violations, White, Shockey, and Mike Persia, owner of the Persia Chevrolet Company, were charged with blue law violations.[11]

The following Sunday 11 violators were reported by the police during a 13 hour investigation that showed 252 firms were open for business.[12] And, for the next several Sundays, the mayor's squad continued arresting White, Shockey, and officials of the Persia Chevrolet Company. Occasionally, a few other violators were also arrested by the squads for violating the state blue law.

In the meantime, a bill was introduced in the state legislature by Senator William T. Moore of Bryan which was

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[11] "Houston Blue Laws," p. 8.

[12] "Blue Law Squad Files 11 Charges," Houston Post, Jan. 16, 1961, sec. 1, p. 1.

designed to supplement the existing Sunday laws. The Moore bill, Senate Bill No. 83, was referred to the Senate's Criminal Jurisprudence Committee and would have prohibited the Sunday sale of practically everything except food, medicine, automobiles, and beer.[13] At the same time, the bill would have prohibited the sale on Sunday, at retail or auction, of a large number of listed items including furniture, clothing, and appliances. And, the bill provided for a penalty of not more than $100 on the first conviction and on subsequent convictions for a jail term up to six months, or a fine of not more than $500, or both.

Senator Moore, who publicly announced "This is not a religious thing with me, but I want to give those people who work on Sunday a day of rest,"[14] said that the Houston conflict over blue laws did not prompt his proposal. But, the senator explained his reason for introducing the bill by saying that he did not beleive there were adequate laws to protect an individual from being required to work on Sunday.

Less than three weeks after the mayor's blue law enforcement policy went into effect, the first convictions resulting

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[13]Texas Legislature, Senate Journal, 57th Legislature, regular session, (1961), p. 93.

[14]J. E. Ericson and James H. McCrocklin, "From Religion to Commerce: The Evolution and Enforcement of Blue Laws in Texas," The Southwestern Social Science Quarterly, XLV (June, 1964), 53.

from illegal Sunday sales were made in Justice of the Peace W. C. Ragan's Court. Six Houston men were found guilty of violating the Sunday closing laws and were fined twenty dollars each. Those fined were Joe Conte, general manager of the Mike Persia Chevrolet Company, three Mike Persia salesmen, and N. Elmer White and Oral Shockey, partners in the White Electric and Lumber Company.[15]

The automobile firm employees, who stood trial without a jury, centered their attack on the complaint which had been drawn up by Assistant District Attorney Walter Carr. Their attorneys, Norman R. McFarland and Thomas White, contended that Carr had erred in identifying the firm as "Mike Persia, Inc." instead of "Mike Persia Corporation." They said that no such firm as Mike Persia, Inc. existed in Harris County. White, who pointed out that the complaint specified that the four men were agents of a "merchant or a person," argued that a corporation was not a person. To this, Judge Ragan quipped "You're sort of straining at gnats, aren't you Tom?"[16]

Two witnesses appeared against N. Elmer White, a partner in the White Electric and Lumber Company. H. L. Stephens, who was a member of the mayor's Blue Law Squad, testified that he saw Elmer White sell a barrel of asphalt to a man on

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[15]"6 Convicted, Fined for Sunday Sales," Houston Post, Jan. 26, 1961, sec. 1, p. 8.

[16]Ibid.

Sunday, January 15. The man who bought the asphalt, Semar La Pointe, acknowledged buying the asphalt to repair the roof of a drive-in he operated, but said that he could not identify White as the man he bought it from. White's attorney, Milton Mulitz, derided the blue law as one going back to "horse and buggy days." He said the law was discriminatory and favored the big downtown merchants over the small, neighborhood businessman. White's attorney, along with the attorneys for the other five defendants, said they planned further tests of the cases and posted $100 appeal bonds.

Shortly after the conviction of White, Shockey, and several employees of the Mike Persia Chevrolet Company, a full page advertisement in a Houston newspaper charged Mayor Cutrer and the Houston police with discriminatory law enforcement. The ad, which was paid for by members of the Citizens Committee for Seven Days of Freedom, included a cartoon caricature of the mayor watching a policeman shoving a helpless businessman. The ad further charged the mayor with passing the buck on the blue law issue to the legislature and with giving in to pressure from businessmen whose businesses were being hurt by Sunday sales at other stores.[17]

But, Mayor Cutrer denied showing favoritism in the enforcement of the controversial laws. The mayor, who said he had

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[17]"Blue Laws Partiality Is Denied," Houston Post, Jan. 30, 1961, sec. 1, p. 1.

seen but not read the ad, tried to defend his enforcement policy by stating: "I maintain that no one has the legal right to violate the law. I am not favoring one group against another."[18] Cutrer said that if the people of Houston felt the law should not apply to their business or if they thought certain things should be exempt by the law, they should take the matter to the state legislature.

Despite the charges of discriminatory law enforcement made by the Citizens for Seven Days of Freedom Committee, the mayor's Blue Law Squad was back in action again on the same Sunday the advertisement appeared in the Houston newspaper. Six charges were made against five persons, which brought the total number filed since the investigations began to twenty-nine. Once again, those charged with blue law violations were White, Shockey, and three officials of the Mike Persia Chevrolet Corporation.

White was charged with being open on Sunday and selling a piece of copper pipe and some copper fittings.[19] Although Sargeant H. L. Stephens of the Blue Law Squad said he saw White sell the items, White insisted that he did not sell the articles to the customer, E. D. McMahon, but that

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[18] Ibid.

[19] The charges were the fourth and fifth charges filed against N. Elmer White since the enforcement policies of Mayor Cutrer had gone into effect.

he gave them to him. According to White, "I just gave it to him and he gave us a little donation for the pipe."[20] The "donation" by McMahon for the pipe amounted to $1.50.

Also charged for blue law violations were Joe Conte, Thomas M. Sheppard, and Wiley B. Johnson, all officials of the Mike Persia Chevrolet Company.[21] The Blue Law Squads went to three different locations of the company between 11:45 A. M. and 2:30 P. M. and filed charges against the managers of all three locations for being open for business on Sunday. Nevertheless, Mike Persia commercials on Houston radio stations continued to declare that "The Mike Persia Chevrolet Corporation will be open for business 365 days a year.[22]

Meanwhile, the Police Department was beginning to tighten up on enforcement of the controversial blue laws. Radio patrol officers were being instructed to file complaints against anyone they found violating the laws. Inspector W. J. Burton said that radio patrol officers were not told to look for violators, but if they saw anyone violating the laws, they were to file complaints.

But, in an effort to halt what Mike Persia officials

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[20] Houston Post, Jan. 30, 1961, sec. 1, p. 5.

[21] This was the fourth consecutive Sunday that Mike Persia officials had been charged with blue law violations.

[22] Houston Post, Jan. 30, 1961, sec. 1, p. 5.

called harassment by the Police Department's Blue Law Squad, the automobile company threatened to file an injunction against the City of Houston to prevent the enforcement of the Sunday closing laws. Norman McFarland, the attorney representing the company, said the civil suit "would be a temporary measure enjoining the enforcement until such time as the law could be sounded out."[23] While admitting that it would be different to enjoin the enforcement of the law, McFarland said that "when there are property rights involved, or harassment or enforcement that is not uniform, we think we have a good case."[24]

Also, Oral Shockey, who had been charged three times for staying open on Sunday, accused the Police Department of harassment. Shockey said "This is like a Gestapo force. It's more like Germany in 1937. To me, it's a simple issue of freedom."[25] Accusing the mayor and the police with favoritism in enforcement, Shockey said that

> After four weeks of diligent looking, only the people at Mike Persia and White's have been charged. If they are really serious about this thing, they should work on others.[26]

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[23]"Blue Law Injunctions Suit Likely," Houston Post, Feb. 6, 1961, sec. 1, p. 1.

[24]Ibid.

[25]Ibid.

[26]Ibid.

Despite the charges of harassment by Shockey and officials of the Persia Chevrolet Company, the Blue Law Squad filed thirteen charges against the same two firms the following Sunday.[27] Eight of the charges were filed against the co-owners of the lumber company, N. Elmer White and Oral Shockey. Although no actual arrests were made, the two Blue Law Squad officers who made the raid, H. L. Stephens and R. C. Rich, told the co-owners that charges would be filed against them. One charge for being open and one charge for selling were filed against Shockey while one charge for being open and five charges for selling were filed against White.[28]

Stephens reported that while they were making the raid on the company, they overheard Shockey tell a customer that he could not sell him anything, but that if he would donate some money to the "freedom kitty" he would give him the items he wanted to buy. The kitty was a five-gallon can sitting on the floor of the store. According to White the money was being collected to help pay for the expense of fighting the blue laws.[29]

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[27]"Blue Law Squad Hits Same Firms," Houston Post, Feb. 13, 1961, sec. 1, p. 1.

[28]The items White and Shockey were charged with selling included: one brass fitting for a kitchen sink, a skill saw blade, a roll of masking tape, a gallon of roofing cement, a sheet of emery cloth, and one metal file.

[29]Houston Post, Feb. 13, 1961, sec. 1, pp. 1, 8.

In the meantime, White and Shockey were doing some blue law sleuthing of their own, using a candid camera to gather evidence. About 10:30 A. M. a friend of White's went to a supermarket and bought a can of paint, which was labeled with a drug department label, and an electric light bulb. White said that the friend obtained a receipt and some trading stamps for the purchase. About thirty minutes later, another friend went to the market and bought a paint brush. And, they recorded the purchase on film.

White said that he told Stephens, one of the Blue Law Squad officers, about purchasing the merchandise. But, Stephens said that they had checked several supermarkets during the morning and that all of the restricted merchandise in the stores had been either roped off or marked with "no sale" signs.[30]

Nevertheless, the blue law controversy took on a new twist three days later when charges were filed against officials of the two supermarkets, a Weingarten's supermarket and a Minimax supermarket, on citizen's complaints. The complaints were filed by Milton Mulitz, an attorney for the White Lumber Company. Mulitz first took his complaints to the City Council and charged that the mayor was enforcing the laws discriminately. The attorney accused the mayor of

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[30] Ibid., p. 1.

picking on the White Lumber Company and the Mike Persia Chevrolet Corporation whose officials or employees had been filed on every Sunday since the blue law enforcement began. Refering to the two companies Mulitz said,

> I don't know whether you, Mr. Mayor, want the city to believe that these are the only two that stay open or not, but if you will come with me I can show you a thousand places in violation of the law.[31]

After producing sacks containing the items which had been purchased at the two supermarkets by J. R. Parrott and Ralph Jackson, both friends of White and Shockey, Mulitz asked if the mayor was "going to stand by and let large chain grocery stores stay open or is he going to order the chief of police to enforce the laws?"[32] Mulitz further pointed out that no provision in the law permitted grocery stores to stay open after 9 A. M. on Sunday.

In answering Mulitz's charge that he was enforcing the law discriminately, Mayor Cutrer said that the Blue Law Squad was limited in size and therefore could not make the rounds of every business open on Sunday. But, the mayor said that just because a business had not been charged did not give it license to operate on Sunday. The mayor also said that even though supermarkets could keep their drug and food departments

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[31] "Supermarkets Are Blue Law Targets," Houston Post, Feb. 16, 1961, sec. 8, p. 1.

[32] Ibid.

open on Sunday, they did not have the right to sell paint, paint brushes, and other prohibited items.

Obviously angered by Mulitz's charge that the mayor was enforcing the laws discriminately, Cutrer told the attorney "Your clients persist in breaking the law and remaining open in defiance of the laws of this state and this city. Your man has been found guilty and you've appealed."[33] But, the mayor stated that the law would continue to be enforced impartially and without discrimination.

As for the two customers who purchased the items at the supermarkets earlier, the mayor said they could file charges of their own. This gave Mulitz an opening to ask Mayor Cutrer if the Police Department would enforce the law if the two customers, Jackson and Parrott, filed complaints against the supermarkets. With the reply that it would enforce the law, Mulitz and his party went to the office of Assistant City Attorney Marion D. Leach and filed charges.

One of the charges filed was against Joe Weingarten, chairman of the board of directors of J. Weingarten, Inc., for operating a business on Sunday. Five charges were filed against Otis England, manager of the Weingarten's store, for operating a business on Sunday and for selling each of the four items Jackson and Parrott said they bought. Also charged

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[33] Ibid.

was John H. Coleman, operator of Coleman's Minimax Store. Coleman was charged twice, once for operating a business on Sunday and once for selling a light bulb to Parrott. Shockey signed the two complaints against the manager of the Minimax store as well as the two complaints against the officials of Weingarten's. And, the other four complaints against the Weingarten officials were signed by Parrott.[34]

The following Sunday N. Elmer White and Oral Shockey, co-owners of the White Electric and Lumber Company, closed up their business so they could lead officers to supermarkets open in violation of the state blue laws. The co-owners, who claimed that blue law officers discriminated against them by repeatedly filing charges on their Sunday actions while ignoring other businesses, locked up their store as officers arrived and then led the policemen to J. Weingarten's Store, Number 2 on Jensen Drive and to the Minimax Supermarket on Irvington Boulevard.

According to the police, White and Shockey went to the stores and purchased cigars, floor wax, and flashlight batteries while two uniformed officers stood nearby to witness the purchases. Although White and Shockey did not confer with the two officers before buying the goods, they said that the officers were in plain sight "so everybody, the sellers,

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[34] Ibid.

the buyers and the police, presumably knew what was going on."[35]

After witnessing the purchases, the officers filed nine charges in Corporation Court for offering for sale or selling goods on Sunday against seven of the supermarket employees. Although no actual arrests were made, five of the employees that were charged were employed by the Weingarten store while the other two charges were filed against employees of the Minimax store. And, the two businessmen who made the purchases, N. Elmer White and Oral Shockey, signed the charges against the employees.

Referring to the charges which had been filed against the employees of the two supermarkets, White said that he wanted to show the people that the mayor and the Blue Law Squad "are not doing a very good job" in enforcing the laws fairly. He said that he closed up his store to help the Blue Law Squad locate other violators, but he said "we still think the laws are unconstitutional."[36]

In order to dramatize his attitude about all laws which he considered outdated, White rigged a hitching post in front of his store in compliance with an obviously outdated law which he said requires for hitching posts to be located in

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[35]"Police Led to Sunday Operators," Houston Post, Feb. 20, 1961, sec. 1, p. 1.

[36]Ibid.

front of business places in Texas. To further dramatize his attitude about some of the "stubborn" enforcement policies, White tied a borrowed donkey to his hitching post and kept it on display in the street all day Sunday.

Also, White installed a portable toilet, facing the street, on the lot in front of his store. The building was labeled with signs which read "Open Sunday" and "PD Only." This was done, White said, because police officers in the past had "hung around the shop all day Sunday."[37]

But, the blue law squads continued their enforcement campaign not only against White and Shockey but also against officials of the Mike Persia Chevrolet Corporation. While White and Shockey were leading blue law officers to super-markets open in violation of the law, other blue law officers were canvassing the three Mike Persia automobile lots. Although the officers filed charges of being open on Sunday against three managers of the automobile firm, the assistant chief of police, George L. Seber, said that fewer complaints of businesses being open were telephoned to police headquarters than during any previous Sunday since the crackdown began on blue law violators.

Three days later, however, the two blue law vigilantes, White and Shockey, filed thirty-five charges of illegal Sunday

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[37] Ibid.

business against ten Houston stores.[38] According to the vigilantes, the charges were based on purchases made after the police officers quit following them to stores open in violation of the law the previous Sunday. Speaking of the charges White said, "We are tired of the mayor setting there and saying the blue laws are being enforced impartially when the same people are being arrested every Sunday."[39]

The vigilantes said they spent a total of $12.14 in making the Sunday purchases on which they based their charges. The cheapest item they purchased was a $.03 pair of shoestrings while the costliest was a $3.20 inner tube. Their other purchases included toilet tissue, shoe polish, rent receipt books, ash trays, screws, pork and beans, glue, and a copy of Playboy magazine.

White and Shockey said that none of the stores hesitated at making the sales, and that all but one of the sales people readily gave their names to be used in filing the complaints. According to White, an employee of Walgreens refused to give his name to the vigilantes because they were not policemen. When the employee refused to cooperate, White and Shockey called the Police Station for assistance. Shortly afterwards,

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[38]The stores included Mading's and Walgreen's drugstores, the Minimax, Weingarten, and Super-Valu supermarkets, and the tire store at Globe Discount City.

[39]"Pair File 35 Blue Law Complaints," Houston Post, Feb. 22, 1961, sec. 1, p. 1.

a policeman was dispatched to the store who secured the employee's name and gave it to the two vigilantes.[40]

Nevertheless, when informed of the charges which had been filed by White and Shockey, Mayor Cutrer said that he planned no changes in the blue law enforcement policies. In answer to a question which asked if it did not seem odd to him that Houston's 1,200 policemen had found only a small number of violators in over a month of enforcement, the mayor replied with an emphatic "no." Cutrer, defending his method of enforcement, said, "Just because White goes around and finds a few things, there's no proof of any widespread violators" of the law.[41] But, the mayor added that White's charges would be prosecuted as vigorously as those filed by the police.

Encouraged by their success in filing complaints against other businesses which were also opening on Sunday, N. Elmer White and Oral Shockey organized a group of about thirty blue law vigilantes the following Sunday to fan out over the city in search of blue law violators. White said the group, which showed up for a briefing at the White Electric and Lumber Company around 9:00 A. M. Sunday, consisted of people who had volunteered to help fight against the mayor's discriminatory

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[40] Ibid., pp. 1, 5.

[41] Ibid.

policy of enforcement. Speaking of the group White said, "Some called us up to volunteer and some asked their friends to help."[42]

Shockey handed each vigilante a mimeographed form on which was to be listed each purchase from a store as well as the name of the sales person and the amount of the purchase. Three or four vigilantes traveled together in one car with one person designated to function as a team captain. White gave each of the ten team captains $20 to pay for the purchases made by his group. He explained that "This is our own personal money," indicating that it was furnished by him and Shockey.[43] Also, each of the team captains was given a section of a Houston map and instructed to concentrate on that particular area.

The vigilantes worked from about 9:00 A. M. to about 3:00 P. M., when they brought the completed information forms, their purchases of merchandise, and the unspent money back to the White Electric and Lumber Company. Their purchases, which amounted to more than $150, included several loaves of bread, two mops, a package of handkerchiefs, a small suitcase, shoe polish, chewing gum, lighter fluid, a screw driver, a package of peanuts, and a golf ball. Speaking about the

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[42]"Blue Law Vigilantes Spread Across City," Houston Post, Feb. 27, 1961, sec. 1, pp. 1, 14.

[43]Ibid., p. 14.

wide variety of merchandise purchased, one of the vigilantes said, "We could have bought anything we had the money to buy."[44] And, another member of the group said that he planned to complain about a real estate salesman who offered to sell him a house.

One of the first places hit by the vigilantes was a gift shop at the Houston International Airport. White, who was one of the members in the group that went to the airport, said their purchases there included a roulette wheel, a toy jet airplane, a replica of a Model T Ford, an Esquire Magazine, and two paperback books. When told about the purchases made by the vigilantes, the manager of the Airport Gift Shop said, "Its in our contract with the city that we cannot close the shop. We have to stay open 24 hours a day, seven days a week."[45] In addition to the purchases made at the Airport Gift Shop, White reported that another purchase was made on city property when one of the vigilantes bought a golf ball at the Hermann Park golf course which was also open on Sunday. These purchases brought strong protests from White and Shockey who had been repeatedly charged by the police for opening their store on Sunday while the City of Houston had also been doing business in apparent violation of the law.

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[44] Ibid.

[45] Ibid.

At another store, one of the members noticed that the cash register receipts were dated Saturday, February 25, instead of Sunday, February 26. When this was brought to the clerk's attention, she said, "Oh, we'll fix that." There were also reports that some of the store managers were calling each other to warn of the vigilantes. Another vigilante said that her group went into one store on Sunday morning and made some purchases, but when they returned in the afternoon the manager refused to sell them some articles. She reported that "As we came in they were putting up little hand-printed signs, 'Not for Sale on Sunday,' in some departments."[46] But, she said that the signs were not up when they were at the store in the morning.

Several of the vigilantes had difficulty in obtaining the names of some store clerks. Acting on the instructions of Shockey, the vigilantes called the Police Department to ask that an officer come out and get the clerk's name, but in every case the request was refused. Explaining the refusals, inspector H. (Buddy) McGill, who was in charge of the police station, said "We just haven't had anyone to send out. We've been real busy today."[47] The inspector said that if he had enough men, he would have been glad to send out an

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[46] Ibid.

[47] Ibid.

officer. But, the inspector cautioned that it should be understood that the police had no power to compel a citizen to give his name to the vigilantes.

While the vigilantes were looking for violators of the Sunday closing laws, the police Blue Law Squad raided four automobile sales locations and filed four charges of its own. Three of the charges were filed against Mike Persia employees[48] and the fourth was filed against Alex Medina, owner of Medina's Used Cars.

Although the police were unable to find but four violators, the Houston Post reported that during a 100 mile drive through Houston numerous drugstores, drive-in groceries, service stations, automobile lots, laundries, and real estate sales offices were open for business.[49] In the drive-in groceries a customer could find many items on the shelves in addition to the regular supply of groceries. But, the City Attorney's Office said, "Establishments such as the U-Tote'm stores can lawfully sell ice, ice cream and milk on Sunday, and therefore may stay open and conduct a limited business."[50] The attorney's office said the fact that a business might be

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[48]The three employees were Thomas M. Sheppard, Joe Conte, and Edd M. Dickens.

[49]"Tour of City Shows Sunday Buying Easy," Houston Post, Feb. 27, 1961, sec. 1, pp. 1, 14.

[50]Ibid., p. 14.

displaying the exempt items in addition to its regular stock of goods was not sufficient to show a violation of the law.[51]

According to the Post, however, the sales in the drive-in groceries were not being limited to ice, ice cream, and milk. Moreover, the same situation was occurring in the large supermarkets. Standing near the checkout stands, one reporter noted that shoppers bags were not being filled entirely with ice, ice cream, and milk. Similarly, the keepers of drugstores were exempt from the prohibition of making Sunday sales. But, the City Attorney's Office explained that druggiest were exempt only in the sale of drugs and medicines. This fact created additional problems in enforcing the Sunday closing laws since most modern drugstores were also selling such items as golf clubs, lawn mowers, electric appliances, luggage, stationery, records, hand tools, cameras and cosmetics.[52]

The widespread violations became more apparent the following day when White and seven representatives of the vigilante group appeared in the City Attorney's Office to file an estimated 200 charges against the managers of each of the

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[51] The Houston city ordinances repeat the substance of the state laws regarding work and the sale of goods on Sunday, which are found in Articles 283 through 287 of Chapter 2, Title 7 of the Texas Penal Code. See Appendices V through IX, pp. 250-56.

[52] Houston Post, Feb. 27, 1961, sec. 1, p. 14.

stores from which the purchases were made and one charge for each of the items purchased. But, the Assistant Attorney, Marion D. Leach, who was the chief prosecutor for the Corporation Court, told the vigilantes to come back the next day so that he could have time to prepare some blank forms on which to enter the charges. Leach expressed surprise at the number of cases the vigilantes wanted to file and said "Had I known that this Sunday closing controversy would mushroom like this I would have printed up form complaints before this."[53] Otherwise, the prosecutor said it would take several days to type up each of the charges.

Leach, who said that he thought the vigilantes were joking when they said they were going to file such a large number of charges, stated that the cases would probably be treated like traffic tickets. Thus, each case would be placed on the docket and the defendants would be notified, either verbally or by post card, to appear for trial. If a defendant refused to show up for trial, Leach said, a warrant would be issued for his arrest. But, by skipping the formality of issuing warrants, the prosecutor said the city could save time and defendants would not have to post bonds. "Besides," Leach said, "all of these people are solid citizens and we don't

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53"Vigilantes Delayed in Case Filing," Houston Post, Feb. 28, 1961, sec. 4, p. 5.

want to treat them like criminals."[54] The next day, Leach and his secretary worked from 10 A. M. to 4 P. M. filing 137 blue law complaints which had been made by the vigilantes. The prosecutor even manned a typewriter himself to fill in the blanks on the mimeographed complaint forms he had prepared earlier. The complaints which Leach had printed up had blanks for the name of the sales person, the store, its location, the name of the purchaser, and the name of the person making the complaint.[55] And, one charge was filed against the sales person for each of the items bought by the vigilantes.

Leach refused to file charges, however, on the basis of some magazines which the vigilantes said they had bought at various stores. Since the state blue law permitted newspapers to be sold on Sunday, Leach said it would be hard to make a case against the sale of magazines. The prosecutor also declined to file charges against the employees of the gift shop in the lobby of the Houston International Airport, explaining that he would like to study the matter further. He said the gift shop may have been engaged in interstate commerce, which could complicate enforcement of the blue laws.[56]

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[54] Ibid.

[55] "Vigilantes File 137 Blue Law Cases; Docket Set," Houston Post, Mar. 1, 1961, sec. 1, p. 2.

[56] Ibid.

But, White said his attorney advised him that the shop's contract with the city was illegal if it required the shop to do something illegal.

As a result of the numerous charges being filed by the vigilantes, the presiding judge of the Corporation Court, Judge Clair Getty Jr., issued an emergency extended docket to meet the glut of charges being filed for Sunday law violations.[57] The judge announced that beginning the following Monday, Corporation Court Number 3 would hear blue law cases on Monday and Friday of each week from 3:30 P. M. to 10:00 P. M. And, Judge Abe Levy was assigned to preside over the sessions when the case came to trial.

Meanwhile, the mayor's enforcement policies were receiving criticism from members of the city council. City Councilman W. H. Jones said that if the mayor "persists in his present methods of blue law enforcement," Elmer White and Oral Shockey should be put on the city payroll. Also, Councilman Lee McLemore criticized the mayor for the police having filed charges against only three firms after eight Sundays of enforcement. The councilman said that three places in eight weeks did not seem reasonable to him. "If they're going to

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[57]Also, because of an over-crowded docket, Judge Bill Miller postponed in County Court-at-Law the first appeals involving Sunday closing convictions until March 22. The convictions postponed were those of Albert E. Hogsett and James M. Sheppard, both employees of the Mike Persia Chevrolet Corporation.

take on a job like this, they ought to be big enough to handle it," said McLemore. Similarly, Louie Welch charged that the mayor's policies were the most discriminatory that he had ever observed.

> From what I've seen of it, Welch said, They're being highly selective. How selective can you get? They had to pass by 50 violators to get to one of them. I think the police are following orders very closely.[58]

And, Councilman Johnny Goyen said that if the vigilantes charges were found to be valid, it would show that the police needed to look elsewhere for violators.

Still, Mayor Cutrer continued to defend his enforcement policies, saying that they were "fair, impartial, and non-discriminatory." Referring to the charges filed by the vigilantes, the mayor said, "Just because somebody might find some violations does not mean to me that the city is not enforcing the law impartially."[59] But, when asked why the police had confined their charges to only three firms, the mayor replied "You'll have to ask them [the police]." Cutrer said that he did not have any plans to change his enforcement program and refused to indicate whether the police would ever enter supermarkets and drugstores and file charges for selling such things as clothing, electrical appliances, and

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[58] "Mayor Defends Methods of Enforcing Blue Laws," Houston Post, Mar. 1, 1961, sec. 1, p. 1.

[59] Ibid.

hardware items that were being sold in violation of the law.[60]

But, the mayor later said that he might have to strengthen the enforcement policies when about twenty hardware dealers, accompanied by their attorney, complained to the city council that they were forced to close on Sunday while hardware items were being sold by other stores. The hardware dealers complained that they were losing money since the merchandise they normally sold was being sold by drugstores, supermarkets, and drive-in groceries which were permitted to remain open on Sundays. And, their attorney, Charles Clements referred to the charges filed by the vigilantes to prove that hardware items could be bought on Sunday.[61]

Clements, who said that he thought the vigilantes had been more effective than the police, charged that if the Police Department was not large enough to enforce the law fairly, there should be additional policemen added to the force. "Having one citizen spying on another is wrong--like Nazi Germany," said Clements.[62] Replying to Clements' charge, the mayor said if it was found "after a reasonable length of time" that the hardware store owners were not being given

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[60] Ibid.

[61] "Stricter Blue Law Clampdown in Sight," Houston Post, Mar. 2, 1961, sec. 1, pp. 1, 6.

[62] Ibid., p. 6.

adequate protection, additional help would be given the police.

While Mayor Lewis Cutrer was actively defending his enforcement policies, the Houston Police Department was busy justifying its method of enforcement. Sergeant H. L. Stephens, one of the officers in charge of the Blue Law Squad, said he had checked as many as fifteen businesses on one Sunday and could find no violators. Stephens said that N. Elmer White had made a "spectacle of selling" in front of him, but other stores refused to make sales of prohibited items in his presence. Also, Chief of Police Carl Shuptrine said that the worst offenders of the law had been repeatedly arrested in hopes it would cause other offenders to close their stores.[63]

But, Shuptrine said it would be difficult to take any more men from the regular services to enforce the blue laws.[64] The police chief expressed the concern of many Houstonians regarding proper enforcement of the laws when he said,

> When people call in burglaries, assaults and other major cases, we can't very well say we can't send a car because men are working on blue laws.[65]

Shuptrine emphasized that the crime rate in the city was going higher and the police were increasingly straining their

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[63] "Police Say Violations Are Scarce," Houston Post, Mar. 2, 1961, sec. 1, pp. 1, 6.

[64] Only one detective, for example, headed the Blue Law Squad which was responsible for covering 550 used car and 100 new car dealers in the city.

[65] Houston Post, Mar. 2, 1961, sec. 1, p. 6.

personnel in order to keep up with the crime trend. The chief refused to comment, however, on whether the mayor had ordered him to arrest only the individuals from the three firms which had been charged since the enforcement campaign began.

In a spirit of co-operation with Mayor Lewis Cutrer's announced plan to broaden blue law enforcement, White and Shockey announced they would close their business so those policemen who had stood guard over their Sunday sales could check up on other violators. White, who was closing his business on the advise of his attorney,[66] said "By staying open, we've been tying up four or five officers and giving them an excuse for not closing at other places."[67] When informed of White's decision, the mayor said the police would check to see if the lumber company was open anyway; and if it was not open, the Blue Law Squads would investigate other businesses.

The mayor expressed concern, however, over the large number of cases the vigilantes had filed in the corporation courts.[68] The mayor, while acknowledging the cases had put

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[66]White's attorney, Milton Mulitz, advised him that it would look bad for him and his volunteers to file charges against Sunday merchants while staying open for business themselves.

[67]"2 Closing Firm Sunday to 'Aid' Police Checks," Houston Post, Mar. 3, 1961, sec. 1, p. 1.

[68]A total of 152 cases had been filed by the vigilantes.

a load on the courts, stated that "Glutting our courts is part of the problem. But that's part of their strategy." Meanwhile, City Councilman Louie Welch criticized the mayor saying Cutrer had promised that all blue law violations would be tried in justice courts to keep from burdening the city courts. But, this was denied by the mayor when he replied "Its never been our intention to release the city from carrying its load."[69]

Nevertheless, Chief of Police Carl Shuptrine announced that the eight-man Blue Law Squad would be increased by two more men so the police could do what White said "a few housewives have done." In addition, Shuptrine said that all the members of the squad would wear plain clothes, instead of uniforms, for the first time since the squad had begun operating. But, the chief pointed out that expanding the squad would create additional problems for the police department. Not only would Sunday work mean that police officers would have to take another day off, but also, with the upcoming vacation season, it would mean cutting deeper into the available manpower.[70]

Later, a new dimension was added to the Houston controversy, raising a possible constitutional question, when the

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[69] Houston Post, Mar. 3, 1961, sec. 1, p. 5.

[70] "Blue Law Unit to Be Enlarged," Houston Post, Mar. 4, 1961, sec. 1, pp. 1, 2.

Blue Law Squad investigated a construction project by the U. S. Army Corps of Engineers on Brays Bayou in the city. According to Robert Cloud, an engineer assigned to the flood control project, construction was scheduled to be completed within two years; but, since construction was running behind schedule, the firm was being required to work on Sunday.

Although construction firms were required to have an emergency work permit when operating on Sunday, a foreman of the firm, Lloyd Ottinger, told the officers that the company did not have the required work permit. Cloud suggested, however, that the police have the city legal department check with the legal department of the Corps of Engineers in Galveston about the permit. While the officers did file a report on their investigation, they apparently withheld filing charges on the firm, pending a ruling from the city legal department.[71]

In addition to filing a report on possible blue law violations at the construction site, the Blue Law Squad made dozens of investigations of other businesses and filed a total of twenty-four offense reports. Automobile supply firms received the brunt of the blue law investigation, and the thirteen of the twenty-four reports filed dealt with auto parts companies in various parts of the city. According to

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[71] "U. S. Runs Afoul of Blue Law," Houston Post, Mar. 6, 1961, sec. 1, pp. 1, 16.

the captain in charge of the police station, the squad had been ordered to concentrate on the auto supply firms since "by the nature of their business" they were violating the law by being open on Sunday.

In all, an estimated fifty-two charges were to be filed by the squad against twenty-one firms selling in violation of the law.[72] Although the officers did not buy any merchandise themselves, they took the names of the persons they observed making the allegedly illegal purchases as well as the names of the clerks or sales person involved.[73] The plainclothes officers were recognized in several of the businesses investigated and were greeted with such comments as: "On the ball, huh," and, "We were expecting you today." Nevertheless, White approved of the officer's investigations and said that he was glad they were looking at a number of businesses, not "just two."[74]

Although White, along with various officials of the Mike Persia Chevrolet Corporation had been charged almost every week with blue law violations, the first charges involving

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[72]The firms included a supermarket, a nursery, a car wash, a hardware store, a garden supply firm, an automobile sales agency, a furniture store, and a shop catering to seamen.

[73]The names of thirty-two persons were recorded on the twenty-four reports.

[74]Houston Post, Mar. 6, 1961, sec. 1, p. 16.

grocery and tobacco items came before Corporation Court almost two months after the mayor's enforcement campaign began.[75] Judge Abe Levy fined six persons a total of $260 for selling a loaf of bread, a pound of shortening, a box of crayons, some cigars, and other items on Sunday. The six persons fined were employees of Weingarten's Store Number 2 and the Minimax Store on Irvington Boulevard. And, the charges were based on items which had been purchased at the two stores by White and Shockey on Sunday, February 19.

An employee of the Minimax Store, Mrs. Lillian Evelyn Weinberg, was charged four times, once each for selling a package of toilet tissue, a pound of shortening, a bottle of bleach, and a box of crayons. When asked by the Assistant City Attorney how she pleaded, Mrs. Weinberg said, "I did it. I guess I'm guilty."[76] Judge Leroy fined Mrs. Weinberg twenty dollars, which was the minimum fine provided by the law, for each of the four charges. And, he fined another Minimax employee, Simeon H. Thompson, twenty dollars each for operating a store on Sunday and for selling cigars. But, the co-owner of the store, Curtis Bay, said he would pay the fines which had been levied against the two employees.

The four Weingarten employees, however, did not appear

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[75]"Tobacco, Grocery Salespeople Fined," Houston Post, Mar. 7, 1961, sec. 1, p. 1.

[76]Ibid.

in court, and pleas of nolo contendere were entered for them by their attorney James A. Baker III. Judge Levy assessed fines of twenty dollars on each of the seven charges against the four Weingarten employees were for the illegal sale of cigars, flashlight batteries, floor wax, a loaf of bread, and a large rat trap.[77]

A short time later, Chief of Police Carl Shuptrine expressed surprise and disappointment over the lack of success regarding the mayor's blue law enforcement policies. Shuptrine, who said the policy for each Sunday had been decided after reviewing the results of the previous week, stated: "We had hoped that a few arrests of the most defiant and flagrant offenders would convince everyone else that they should obey the laws, but it doesn't seem to have worked."[78] Then, Chief Shuptrine gave four reasons why the blue laws had not been enforced as much as most other offenses. The reasons given by the chief were:

> (1) the laws cover such a wide range of business activity, (2) there seem to be so many offenses, (3) enforcement has always been given a low priority, and (4) there has been no emergency about the enforcement.[79]

Similarly, City Councilman Frank Mann expressed disillusionment with the blue laws, which he described as "obsolete,

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[77] Ibid., p. 9.

[78] Ibid.

[79] Ibid.

discriminatory, and ridiculous," and said that he would ask the mayor and the city council to declare a moratorium on all blue law enforcement. Mann, while advocating a respite on the law in Houston, urged the councilmen to seek a legislative review of the confusing state of the Sunday closing laws. District Attorney Frank Briscoe agreed with Councilman Mann but said that he did not think pending legislation to increase the maximum penalty from $50 to $500 for second offenders would be a deterrent. Briscoe said that such legislation would place original jurisdiction in county-courts-at-law instead of justice of the peace and corporation courts and, therefore, would overload the county courts.[80]

Although Mayor Lewis Cutrer refused Mann's request to declare a moratorium on blue law enforcement, the mayor did support a resolution by the city council asking the Harris County representatives to seek a legislative review of the blue laws. The resolution, which was described as "permissive," called for advising the Houston representatives that the enforcement attempts had pointed up inequities and that full enforcement would cause great economic loss. It also asked the delegation to review the laws and decide what changes, if any, should be made to empower cities to pass ordinances regulating sales, labor, manufacturing, and other

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[80]"Mann Wants Respite on Blue Laws," Houston Post, Mar. 8, 1961, sec. 1, pp. 1, 2.

activities on Sunday.[81]

All of the councilmen, except Bill T. Swanson, voted for the resolution. Swanson opposed the resolution because he believed that enforcing the law was an administrative matter, strictly the mayor's responsibility, and that it was pointless for the council to involve itself. Mayor Cutrer, however, succeeded in obtaining approval of an amendment deleting a request that the legislature repeal the blue laws. But, the mayor said that if the legislature was asked to consider changes, the city council should be ready to offer suggestions.

Earlier, Pastor A. D. Leach, of the Houston Central Seventh-day Adventist Church, appeared before the council and twice said that only a "madman" would enforce the blue laws. The minister called the law "unconstitutional, un-American, un-Christian, unfair, and unnecessary."[82] He charged that Cutrer was going to have thousands of people working on Sunday in order to keep other people from working on Sunday. Leach further deplored what he said was the widespread sale of alcoholic drinks and scandalous magazines on Sunday while some Houstonians had been convicted on charges of selling toilet tissue, shortening, bread, and crayons.

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[81] "Council to Give Solons Blue Laws," Houston Post, Mar. 9, 1961, sec. 1, p. 1.

[82] Ibid., p. 10.

Replying to the resolution which had been passed by the Houston City Council, the Harris County legislators said the council had waited too late for legislative action to be taken on the controversial laws. They pointed out that the midnight deadline for introducing bills was only one day away, and that after the constitutional limit expired, it would take a four-fifths vote of consent by the House to introduce such a bill.

Several of the legislators were critical of the way the council was trying to solve the problem. Representative Paul Floyd, for example, charged that the council was "flat trying to pass the buck."[83] Senator Robert W. Baker said that the council's last-minute decision to ask for legislative help "sounds to me a little like one of those misery-loves-company affairs." And, Representative Criss Cole said he would be glad to talk to the city officials about the problem, but he added: "I'm afraid they're a few days too late. It would be such a controversial bill we could never get it introduced."[84]

Another Houston representative, Charles Whitfield, favored some kind of legislation that would require stores and other establishments to close one day a week but leave

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[83]"No Blue Law Bill Possible, Houston Told," Houston Post, Mar. 10, 1961, sec. 1, p. 1.

[84]Ibid.

the choice of days up to the individual merchant. Representative Donald Shipley, however, said that he would introduce a bill before the deadline to make Sunday closing a matter of local option in each county. But, he said he was not optimistic over the possibility of getting it passed during the regular session of the Fifty-seventh Legislature.[85]

Despite his lack of optimism over the possibility of its passage, Shipley introduced House Bill No. 1005 only a short time before the sixty-day limit for introducing bills expired.[86] The bill would have amended the blue laws, permitting a municipality to pass an ordinance which could exempt it from the provisions of certain articles in the Sunday law statutes. Another bill, Senate Bill No. 83, had been introduced earlier, but its sponsor, Senator William Moore, had made no effort to get a hearing on the bill because there were several blue law cases pending before the U. S. Supreme Court. However, both bills were lost in the furor created by the adoption of the state's first general sales tax.

Meanwhile, a county court-at-law jury upheld the state blue laws in the first appeal of a corporation court conviction in Houston.[87] The first appeal action resulted in a

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[85] Ibid.

[86] Texas Legislature, House Journal, 57th Legislature, regular session, (1961), p. 770.

[87] A total of forty-three cases had been appealed to the

maximum $50 fine, plus court costs of $35.85, for Oral Shockey, co-owner of the White Electric and Lumber Company. Shockey's attorney, however, said he would file a writ of habeas corpus and appeal the conviction to the Court of Criminal Appeals.[88]

Later, a charge which had been filed by a vigilante against Mrs. Vera Hoffman was dismissed when the merchandise the defendant was accused of selling turned out to be a clothesline instead of an extension cord. Alan Kratzer, a vigilante, testified in a positive manner that he had purchased an extension cord from Mrs. Hoffman earlier at the Pak-A-Sak Store. When the merchandise was presented as evidence, however, defense attorney W. K. Graham pointed out that it was a clothesline and not an extension cord. Therefore, the charge was dismissed, at the request of both the defense and prosecuting attorneys, by Corporation Court Judge Abe Levy on the ground that it was a faulty complaint.[89]

In a separate case, however, Mrs. Hoffman was found guilty and fined $20 by Judge Levy for selling a pair of gloves to the same vigilante on Sunday. Also, Mrs. Myrtle

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county courts since the beginning of the enforcement campaign on January 8, 1961.

[88]"Jury Upholds Blue Laws in Initial Appeal Here," Houston Post, Mar. 10, 1961, sec. 1, pp. 1, 5.

[89]"Blue Law Charge Is Dismissed," Houston Post, Mar. 11, 1961, sec. 1, pp. 1, 7.

Hopkins, an employee of the Ralston Drug Store, was found guilty and fined for selling a $6.98 camera to Mrs. C. B. Lawless, another member of the vigilante team. Two other vigilantes testified that they witnessed the purchase and Judge Levy assessed the drugstore employee a $20 fine for making an illegal sale on Sunday.[90]

Despite wide-spread opposition to the blue laws and increased court cases resulting from mass violations, the Houston Blue Law Squad continued to operate on orders from Mayor Lewis Cutrer. On Sunday, March 12, five two-man Blue Law Squads, plus one vigilante squad, patrolled the city and reported more than forty violations of the law. The police divided the city into four patrol sections, with one squad assigned to each section, while the fifth unit, a special auto supply patrol, was assigned to cover the entire city. The police investigations, which resulted in a wider range of business activities than previously, included several auto supply houses, a nursery, a small grocery store, a supermarket, and a furniture auction.[91]

In addition to the police investigations, vigilantes N. Elmer White and Oral Shockey reported that they bought cigarettes and film at several drugstores and supermarkets.

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[90] Ibid., p. 7.

[91] "Police Find Stores Open, Do Not File," Houston Post, Mar. 13, 1961, sec. 1, p. 1.

Commenting on the purchases, White said, "It was the same as it has been in the past. They were open and doing a landslide business."[92] But, White was not sure whether he and Shockey would file charges against the businesses.

Although the police found more than forty violations, Mayor Cutrer insisted that his blue law campaign had been effective. The mayor said that he had toured parts of the city himself and had seen several businesses that had closed since his campaign began. And, he insisted that most businessmen were co-operating simply because they did not want to stay open on Sunday.

The mayor also pointed out that he had received over 150 printed postcards, each signed by an individual, endorsing his stand for blue law enforcement.[93] The cards were mimeographed with the message:

> I appreciate the efforts you have made and are making to keep the Sabbath as a day free for worship and rest. Please be assured of my continued wholehearted support in this.[94]

According to Harold T. Pultz, pastor of the Waugh Drive Baptist Church, the cards had been printed by several members of the church to encourage enforcement of the laws.

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[92] Ibid.

[93] "Blue Law Cases Pile Up As Docket Delays Plague Court," Houston Post, Mar. 14, 1961, sec. 1, p. 1.

[94] "Cutrer's Blue Law Fan Mail Rigged, Says Cleric," Houston Post, Mar. 19, 1961, sec. 1, p. 12.

But, Pastor A. D. Leach, who was president of the Greater Houston Council of Seventh-day Adventist Churches, said the mayor's blue law fan mail was "apparently purposely rigged." Leach named another church group as being a party to the rigged fan mail and said that his church was offered some of the cards but the offer was refused. The minister further described the response from the 900 churches in the Houston area as being "pitifully weak" and said that if the issue were put to a vote, "it would be overwhelmingly defeated because it is not the will of the people." He said that his group was conducting a telephone survey of Houstonians on the blue law issue and that the vote had gone two to one against the mayor's blue law campaign.[95]

The pastor also charged that a Houston television station, which had earlier telecasted the mayor's views on Sunday closing, told only one side of the blue law controversy. Although Leach did not question the sincerity of those who presented their views, he charged that "There are scores of thousands of citizens opposing this who also have sincere views." And, the minister said he would demand free television time to present the other side of the mayor's Sunday closing program. If the stations refused to give the opponents free time, however, he said it would be bought.[96]

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[95] Ibid.

[96] Ibid.

Two days later, Joe Conte and Wiley B. Johnson both employees of the Mike Persia Chevrolet Corporation, challenged in County Court-at-Law the constitutionality of the blue laws and their applicability to corporation employees. The two employees were appealing their $20 fines, which had been assessed in a Justice of the Peace Court, on grounds that the laws did not apply to "corporations." Defense Attorney Norman R. McFarland pointed out that the statute prohibited a merchant, dealer or trader, or "his" agent or employee, from permitting "his" place of business to be open on Sunday. McFarland argued that if the statute was meant to apply to corporations, it would have specifically mentioned corporations and referred to "its" agents and employees. The attorney said that it is not possible to say of an employee that a corporation is "his" business.[97]

But, Assistant District Attorney J. R. Musslewhite, who was prosecuting the case, said that if Judge Billy Ragan accepted McFarland's line of reasoning, it would give every corporation in Houston a license to operate on Sunday. Judge Ragan, however, instructed the attorneys on both sides to submit briefs at a later date showing court decisions on whether corporation employees can be found guilty under the blue laws. And, the judge said if there were any decisions which had

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[97]"Corporation Status In Blue Laws Questioned," Houston Post, Mar. 21, 1961, sec. 1, p. 1.

been made regarding corporations, he wanted to make his ruling in keeping with those decisions.[98]

Another defense attorney, Thomas White, argued that the blue laws violated the Texas Bill of Rights which prevent the state from giving preference to any religious society or mode of worship. The attorney contended that blue laws "favor the rights of certain Christian religions and overlook the rights of the Seventh Day Advents and the Jews."[99]

In addition to the charges against the two Mike Persia employees, several other defendants were found guilty in Corporation Court of making sales in violation of the blue laws. An employee of the Tanglewood Pharmacy, Mary Ann Campise, was given a minimum $20 fine for selling a thermos bottle while Delores Lee, an employee of the Briargrove Pharmacy was fined $20 for selling a comb on Sunday. Pleas of nolo contendere were entered on each of the three charges against Sandra Neel, an employee of the Plaza Pharmacy. She was fined $20 on each of the charges and her attorney gave notice of appeal to the County Court.[100]

Although Texas Baptists were generally considered staunch advocates of Sunday closing and had demonstrated their support

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[98] Ibid.

[99] Ibid., p. 9.

[100] Ibid.

on several occasions for Mayor Cutrer's blue law stand, as well as for the state Sunday laws in general, an employee of the Memorial Pharmacy, in the Memorial Baptist Hospital in Houston, was fined for selling several non-pharmaceutical items in violation of the Houston blue law ordinance. The employee, Eunice Carroll, pleaded guilty and was fined $20 on each of four charges against her for illegal Sunday selling. A fifth charge of selling a package of peanuts, however, was dismissed.[101]

Meanwhile, the increasing number of charges being filed each week was causing congestion in the city and county courts. With forty-six additional charges being filed during the last week of March, a Houston Post tabulation showed a total of 304 charges being filed since the beginning of the mayor's blue law enforcement campaign.[102] Furthermore, N. Elmer White, Oral Shockey, and the other blue law vigilantes were responsible for 204 of the total number of charges which had been filed. And, along with the increasing number of charges was a corresponding increase in pressure on the state legislature to revise the out-dated laws.

Not all violations found resulted in charges being filed, however. A few of the charges were thrown out because the

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[101] Ibid.

[102] "City Urges Revision of Blue Laws," Houston Post, Mar. 22, 1961, sec. 1, p. 1.

complaints did not appear to be valid charges or the cases were weak in some aspects. In other cases, the charges were defective or pertinent information was lacking.

With public opposition to the laws continuously mounting and with the number of charges for blue law violations steadily increasing each week, the laws were given a new legal interpretation when Judge Bill Miller ruled in a County Court-at-Law decision that Sunday closing laws did not apply to the employees of corporations. The ruling came as the result of an appeal by Thomas M. Sheppard, an employee of the Mike Persia Chevrolet Corporation, who had been fined $20 in a Justice of the Peace Court for opening the company's branch location for business on Sunday.

Attorneys for the automobile agency, Norman P. McFarland and Thomas D. White, argued as they had previously that the statutes did not apply to "corporations." McFarland contended that the words "any such person" and "his" referred only to persons and, therefore, did not apply to corporations.[103] Likewise, White argued that the laws were not intended to apply to corporations and that the legislature had deliberately omitted the word "corporations" from the original law.

Although Assistant District Attorney Walter A. Carr strongly objected to the defense arguments, Judge Miller ruled

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[103]See Article 286 in Appendix VIII, p. 253.

that the defendant, Thomas Sheppard, was innocent of the charge. Judge Miller based his ruling on the fact that the word "corporation" was omitted from the law, but that Sheppard had been charged with being the agent and employee of a corporation. However, the judge told Carr "If you hadn't had the word corporation in the charge, you would have had it made."[104]

But, according to District Attorney Frank Briscoe, the judge's ruling "further confused an already confusing situation." Many officials of corporations, for example, interpreted Judge Miller's ruling as a signal for them to open their businesses on Sunday. Norman R. McFarland, representing the Mike Persia Corporation employees charged with blue law violations, said he thought the door was wide open for corporations to do business on Sundays. Mayor Lewis Cutrer was quick to respond, however, saying "Just because a case is lost in court doesn't mean we're going to give up our enforcement program." Referring to Judge Miller's ruling regarding corporation employees the mayor said, "We'll just have to explore the possibility of wording it a complaint thus and so."[105]

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[104]"Salesman Wins Blue Law Appeal," Houston Post, Mar. 23, 1961, sec. 1, p. 1.

[105]"Ruling Causes Shifting Strategy in Blue Laws," Houston Post, Mar. 24, 1961, sec. 1, p. 10.

Judge Miller's ruling also created consternation among public officials responsible for enforcing the laws. Briscoe said that he did not know how a complaint against an employee of a corporation could be drawn up and still be valid within the requirements specified in the judge's ruling. Judge Miller agreed with Briscoe but said that since the word corporation was not specifically mentioned in the law, it would have to be put in future complaints by "influence, innuendo, or guess." Briscoe's assistant, William A. Carr, however, emphatically stated: "I'm not going to compromise my own principles or the law. It would be subverting justice to do so."[106]

Following the judge's ruling, attorneys representing both the Mike Persia Chevrolet Corporation and the White Electric and Lumber Company announced plans to test the constitutionality of the blue laws. Milton Mulitz, attorney for the White Electric and Lumber Company, said he was preparing a federal lawsuit against Chief of Police Carl Shuptrine to test the constitutionality of the laws. The attorney said the suit would allege that the police chief was violating two amendments to the U. S. Constitution in arresting persons for doing business on Sunday.[107]

First, Mulitz maintained that the state Sunday closing

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[106] Ibid.

[107] "2 Actions Prepared To Test Blue Law Validity," Houston Post, Mar. 25, 1961, sec. 1, p. 1.

laws attempted to regulate religion in violation of the First Amendment. Also, he argued that the laws were contrary to the Fourteenth Amendment on three counts: By discriminating, by taking property without due process of law, and by failing to afford equal protection to all citizens.

Meanwhile, attorneys for the Mike Persia Chevrolet Corporation announced that they had thirty-three cases coming up for appeal in the County Court-at-Law. They were planning to center their attacks on whether corporate agents were liable under the state's blue laws. According to Norman R. McFarland, attorney for the automobile firm, the defense would contend:

> (1) That no person or persons may do business under an assumed name without first filing the assumed name with the clerk of the county in which he does business. (2) That in the Texas penal code the word "person" means only a natural person and cannot be assumed to mean an artificial person and, therefore, a corporation. (3) That Article 7 of the penal code shall be construed under the plain import of the language in which it is written and no person shall be punished for an offense which is not made penal by the plain import of the words of the law. (4) That Article 19 defines that the term "any person" shall include females as well as males, unless there is an express declaration to the contrary. (5) That Article 22 holds that when property is intended to be protected by the code, and the word "person" is used, it shall extend to the property of the state as well as corporations.[108]

The inference drawn here was that the legislature was mindful of the fact that only where property was to be protected was the word "corporation" used in the law. McFarland summed up

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[108] Ibid., p. 2.

the defenses' position by saying, "You've got to accept the language of the penal code as it is ordinarily used and in no other way."[109]

A short time later, however, two Corporation Court judges issued two different opinions on the issue of Sunday sales "entrapment." Judge J. B. Martin dismissed a charge against a hardware store manager who had been charged with selling a $1.50 can of paint to a blue law vigilante. But, Judge Abe Levy refused to dismiss a similar charge a short time later, ruling that the charge did not violate the law of entrapment. The defendant, H. F. Patterson, who was manager of a U-Tote'm Store, was found guilty and fined $20 for selling a bag of charcoal to a group of vigilantes. Judge Levy ruled that

> If the store was closed and its owner, agent, operator or employee had been induced to open the store for the purpose of making a sale which would be illegal, then there would be entrapment.[110]

But, the judge ruled that as long as the business was opened to the public, there could be no entrapment.

Although a large number of the individuals charged with blue law violations up to this time had pleaded guilty and, in most cases, received the minimum $20 fine, many pleaded

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[109] Ibid.

[110] "2 Judges Crosswise in Blue Law Rulings," Houston Post, Mar. 28, 1961, sec. 1, p. 1.

rolo contendere and appealed their cases to a higher court. Accordingly, N. Elmer White and Oral Shockey filed a federal suit through their attorney asking a U. S. Circuit Court of Appeals to declare Texas Sunday closing laws void and unconstitutional. The suit, which was filed by Milton Mulitz, sought a preliminary and final injunction against police chief Carl Shuptrine to keep the blue laws from being further enforced.

> Specifically, the suit ask the appeals court to
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> prevent the deprivation, under color of state law of rights, privileges and immunities secured by the Constitution of the United States...[111]

In addition, the suit claimed that the laws, which had become riddled with amendments and exception, deprived the defendants, White and Shockey, of equal protection of the law guaranteed of the Fourteenth Amendment. It further stated that the laws, which were described as being "limited, discriminatory and impracticable," deprived them of the rights secured by the First Amendment guaranting religious freedom.[112]

Another suit was filed a few days later, this time against a blue law vigilante, by a telephone repairman who

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[111] "2 Houstonians Take Blue Laws to Federal Court," Houston Post, Mar. 29, 1961, sec. 1, p. 1.

[112] At the time White and Shockey filed their suit in the federal court, several other blue law cases were pending before the U. S. Supreme Court testing the constitutionality of Sunday closing laws in other states.

had earlier been acquitted of charges filed against him for selling a can of paint. The suit was filed against Alan Kratzer and resulted from a complaint which had been made by the vigilante after he had purchased the paint from the repairman, John D. Robinson. According to the repairman, Kratzer had induced him to sell the small can of paint even though he had told Kratzer the shop was not open for business. Consequently, Robinson filed the $15,000 lawsuit against the vigilante, charging that he and his family had been subjected to humiliation and embarrassment by the charge.[113]

Meanwhile, another new facet was added to the blue law controversy when District Attorney Frank Briscoe refused to accept charges directed against the gift shop located in the Houston International Airport, based on the complaints of N. Elmer White and other blue law vigilantes. Although a representative of the district attorney's office, Walter Carr, had earlier prosecuted White on a blue law charge. Briscoe refused to accept similar charges against the gift shop saying "It is not the function of this office to accept charges."[114]

In a letter to White, Briscoe said the proper place for the filing of such charges was in the Justice of the Peace or Corporation Courts. The District Attorney said, "This

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[113]"DA Won't Accept Blue Law Airport Charges," Houston Post, Apr. 1, 1961, sec. 1, p. 6.

[114]Ibid.

office has neither the authority nor the inclination to direct a justice of the peace or the clerk of a Corporation Court to accept any complaint."[115] However, Briscoe said that he would prosecute any appeal cases in the County Court-at-Law, or any time a case reached his level of prosecution.

White, who pointed out that the city legal department had been searching for thirty days to determine the legal position of the Airport Gift Shop and had not "produced any law on which to base their reluctance," announced that he would file a complaint in a Justice of the Peace Court against the shop. He said that he and his business partner, Oral Shockey, had made seven different purchases at the gift shop on February 26, but that he had not been able to persuade the city prosecutor, the Corporation Court, or Mayor Lewis Cutrer to accept any charges.[116] Furthermore, the shop had continued to stay open for business twenty-four hours a day, seven days a week, as required in its contract with the city.

While the Blue Law Squads were continuing to report alleged violations of the Sunday closing laws,[117] White was

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[115] Ibid.

[116] Ibid.

[117] On Sunday, April 2, 1961, for example, eight Blue Law Squad officers visited twelve locations and reported fifteen alleged violations. The officers reported violations at four locations of the Mike Persia Chevrolet Corporation and eight automobile supply firms.

renewing his efforts to have charges filed against the two women clerks from whom the purchases had been made at the gift shop.[118] Although Justice of the Peace Dave Thompson refused to accept charges against the two employees, he said he would hold a court of inquiry to learn whether the laws had been violated. Thompson, who expressed concern about the inconsistencies with which the blue laws had been enforced, said "If the court shows there has been a violation of the law, they the gift shop will be filed upon."[119]

White argued that the city officials were being unfair because they were forcing all stores around the airport that sold the same items as the concession stand did to close on Sundays. But, Miss Virginia Holmes, manager of the concession stand, explained that "The stand isn't built to be closed." White, however, said that "Before any government attempts to enforce the law it should clean its own skirts first."[120]

Although Justice Thompson announced that he would conduct a court of inquiry "any time any complaint is made to

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[118]The purchases included a small roulette wheel, a toy auto, two batteries, and a paperback novel.

[119]"JP Blue Law Inquiry Set On Gift Shop at Airport," Houston Post, Apr. 4, 1961, sec. 3, p. 12.

[120]"Inquiry Planned First In Closing-Law Charges," Houston Post, Apr. 5, 1961, sec. 1, p. 2.

me by any person, or if it comes to me that the laws have been violated,"[121] he later abandoned his plans when he was rebuffed by the district attorney's office. The justice further said that he would refuse to accept any charges of violations of the blue laws unless they were first channeled through the district attorney's office.[122]

Previously, Thompson had announced that he also planned to delve into possible violations by real estate and boat dealers as well as the operators of bowling alleys. But, Assistant District Attorney Walter A. Carr, who said he was following the orders of District Attorney Frank Briscoe, refused to participate in any inquiries other than the one concerning the gift shop. In a letter to Thompson, Briscoe expressed his feelings about the inquiry by saying "I do not feel a court of inquiry is necessary or will solve any issue in the matter." Briscoe further stated that "The responsibility of deciding whether or not charges should be filed with [sic] ultimately be up to you."[123]

The matter became even more confusing when the question arose as to whether the city contract with Faysis Corporation, which operated the Airport Gift Shop, required the

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[121] Ibid.

[122] "Blue Law Inquiry Court Plan Abandoned by JP," Houston Post, Apr. 7, 1961, sec. 1, p. 6.

[123] Ibid.

shop to remain open twenty-four hours a day, seven days a week. Aaron Goldfarb, the attorney for Faysis, said that he believed there was such a clause in the contract; but, Henry Knoble, who handled the city contracts in the city controller's office, was not sure whether the contract provided that the shop could remain open or was required to remain open on Sunday.[124]

Nevertheless, Justice Thompson said: "I feel and have felt for many years that it is the duty of the district attorney of this county to determine if charges are to be filed."[125] But, when White and Shockey again went to Briscoe's office in an attempt to get charges filed against the two employees, they were referred to Assistant District Attorneys W. C. Moore and Walter A. Carr. The District Attorney's office refused the charges, however, saying

> We have been adviced that the city attorney's office has taken this specific case under advisement. They should be afforded a reasonable time in which to render a decision.[126]

With no other alternative available for him, White said he would agree to give the city attorney more time before going back to the District Attorney's office.

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[124] Ibid.

[125] Ibid.

[126] Ibid.

Before the city attorney had time to make a ruling on the legal status of the Airport Gift Shop, however, a special Freedom Forum program, featuring speakers from throughout the nation,[127] was being held to discuss Houston's blue law controversy as well as other conflicts between church and state. The theme of the inter-faith meeting was "Eternal Vigilance Is the Price of Liberty," and featured several outspoken critics of blue laws. Among the critics was W. Melvin Adams, a Seventh-day Adventist, who spoke on the subject of "Voluntary Religion versus Establishment by Law."[128] Adams said that "Sunday Laws are not a step forward. They are a step backward."[129] And, he urged for citizens opposing the laws to express their views in correspondence with their representatives and other influential citizens.

Another critic, Pastor A. D. Leach, who was president of the Greater Houston Council of Seventh-day Adventists, charged that a black market in blue law items was operating by telephone in Houston. Although the minister did not

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[127]The speakers included W. Melvin Adams of Washington, D. C., national secretary of the International Religious Liberty Association; Howard B. Weeks also of Washington, D. C., who was a special correspondent for Liberty magazine, a Seventh-day Adventist publication; and J. C. Zbranek, a Liberty attorney and former state representative.

[128]"Blue Laws Discussion Set Today," Houston Post, Apr. 8, 1961, sec. 1, p. 11.

[129]"Blue Law Black Market Going, Churchman Says," Houston Post, Apr. 9, 1961, sec. 1, p. 16.

identify the callers, he said he had received several telephone call from a number of people who said they could get him anything he wanted to buy on Sunday.[130]

The minister also said that in view of the fact that forty-eight per cent of the state's population did not belong to a church, the laws "deprive men and women of their right to life, liberty, and the pursuit of happiness." Leach further charged that the "Police are arresting good honest citizens over a roll of toilet paper." And, pointing out the absurdity of such laws, the minister said,

> You're a criminal for buying a loaf of bread, but if you go down and buy a case of beer, you're a good honest citizen. We're making hypocrites or criminals out of our good citizens.[131]

Also, J. M. Dawson, who was associate chairman of the Dawson Church-State Studies at Baylor University, said

> To enforce Sunday closing by law has a great deal of dubiousness about it. Any law regarding Sunday would have to establish itself clearly in the public interest and not infringe on the interests of the people.[132]

And, D. H. White, editor and publisher of the Jewish Digest charged that "A number of people are hiding behind the shield of religion." He said that "We should question the motives of clergymen who favor enforcing these laws."[133]

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[130] Ibid., p. 1.

[131] Ibid., pp. 1, 16.

[132] Ibid., p. 16.

[133] Ibid.

Despite opposition voiced at the Freedom Forum, however, the Blue Law Squad was in operation the next Sunday, but at a seemingly scaled-down-pace. Although thirteen sellers were listed in officers' reports as "suspects" for selling such items as a dozen diapers, eight pairs of socks, a can of automobile polish, and a woman's dress pattern, the Blue Law Squad did not visit the White Electric and Lumber Company which was also open for business. The Squad did visit three department stores, six auto supply stores, three nurseries, and an auto dealer, but made no arrests of the suspected violators. Meanwhile, White said no further action would be taken by the vigilantes because they had already served their purpose. "We're not interested in closing everybody up on Sunday," he said.[134]

Prompted by the complex and confusing problems associated with enforcing the blue laws, Mayor Lewis Cutrer came up with two amendments for the proposed Sunday closing law bill which had been introduced earlier by Representative Donald Shipley. One of the amendments would have provided that municipalities could have the right to regulate Sunday sales as well as the operation and conduct of recreational facilities and businesses. The second proposed amendment would have specified the types of goods or merchandise to

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[134] "13 Blue Law 'Suspects' Are Listed," Houston Post, Apr. 10, 1961, sec. 1, p. 8.

be sold and would have authorized the operation of other named businesses, such as hospitals, convalescent homes, motels, drugstores, restaurants, newspapers, radio stations, and television stations.[135]

The amendment would have also allowed the operation of theatres, public shows, bowling alleys, athletic events, and public amusements. It would have approved the operation of public utilities, public transportation, the showing of real property, the operation of service stations, and the operation of laundromats. Goods that would have been authorized for sale included food, soft drinks, drugs, medicines, tobacco products, nursery items, and motor fuels and lubricants. The mayor's proposals, however, did not authorize the operations of new or used car lots. Although Representative Shipley was of the opinion that it would be best to handle the proposed amendments to the state's blue law statutes as a local problem, he promised to make every effort to see that the mayor's proposals were given due consideration.[136]

Mayor Cutrer said that he felt "duty bound to rely on the law despite the fact that it might be unpopular." The mayor emphasized that for several years the commercializing of Sunday had been steadily increasing. For competitive

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[135]"Cutrer Has 2 Blue Law Bill Riders," Houston Post, Apr. 11, 1961, sec. 1, pp. 1, 10.

[136]Ibid.

reasons, the mayor said that more and more businesses had been required to remain open on Sunday and, in turn, the welfare of a large segment of society had been affected. More people had to work and that presented an economic and moral problem, Cutrer said.[137]

In addition, Mayor Cutrer said that the majority of the communications he had received concerning the blue laws and their application in Houston had indicated the people wanted them enforced.[138] Later, meeting with approximately forty-five merchants and business representatives in his City Hall office,[139] the mayor was given whole-hearted support by the group for his blue law stand. And, several of the members promised to attend the hearings on Shipley's bill which was to come up later before the House Municipal and Private Corporations Committee in Austin.

Also, in an address before the Union Association Baptist Brotherhood, the mayor strongly defended his actions in

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[137] Ibid., p. 1.

[138] Mayor Cutrer's claim, however, contradicted the charge which had been made earlier by Pastor A. D. Leach that a city-wide poll of the people had indicated the laws were "not the will of the people."

[139] The group that went to Cutrer's office represented various department and chain stores, florist, retail merchant, retail grocer, mobile homes, pharmaceutical, service station, and automobile dealer associations. "Meetings Back Cutrer On Sunday Law Changes," Houston Post, Apr. 12, 1961, sec. 1, p. 4.

initiating the Sunday closing enforcement in Houston. Cutrer told the group of about 500 men that he had been concerned for many years about the widespread violations of the Sunday laws. But, "the straw that broke the camel's back," was the opening of the large discount stores on Sunday. Agreeing with the mayor's blue law stand, the Brotherhood unanimously passed a resolution backing Cutrer in the enforcement and in his plans to have the Sunday laws amended.[140]

Several members of the City Council were critical of the mayor's proposals; however, City Councilman Louie Welch opposed both of the proposals, saying that he did not want the

> Council to pass a law that will be subject to change every week. He said that he preferred a bill which would prohibit a retail establishment dealing in supplies commonly offered to the consumer from opening more than six days a week.[141]

Another Councilman, Lee McLemore, who was irked over Cutrer's going to the legislature with amendments he had not presented to the City Council, criticized the mayor for what he termed an attempt to saddle the council with enforcement of the Sunday closing laws in Houston. McLemore said "Before he makes any suggestions to the legislators on what the council should do he should first put it before the

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[140] Ibid.

[141] Ibid.

council."[142] And, the Councilman said that he would have no part in the mayor's plan.

Nevertheless, Mayor Cutrer was continuing to press his campaign for stricter observance of the blue laws. By mid-April over 350 charges had been filed since the mayor began enforcement of the Sunday closing laws on January 8. And, with more cases being appealed each week, increasing strain was being placed on the county courts. Along with this increasing strain was a growing tendency for defendants to appeal their cases to the higher courts where the possibility for winning the appeals of their convictions increased.

Two such defendants, Joe Conte and Wiley B. Johnson, both Mike Persia employees, won their appeals in Judge Billy Ragan's County Court-at-Law. The judge, ruling that the state's Sunday closing laws exempt the employees of corporations, said he would decide other cases involving corporation employees in the same way. "When you have a choice between individual freedom and government controls, there is no question of which way I am going to go," Judge Ragan said.[143] The judge's ruling, however, brought criticism from Assistant District Attorney Wallace C. Moore, who said that

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[142]"McLemore Critical of Cutrer Blue Law Action," Houston Post, Apr. 13, 1961, sec. 1, p. 10.

[143]"2 Salesmen Win Appeal In Sunday Closing Case," Houston Post, Apr. 13, 1961, sec. 1, p. 11.

the district attorney's office would ask Ragan to transfer cases from his court to another County Court-at-Law when they go to Ragan on appeal.

Although Mayor Lewis Cutrer had previously refused to enforce the blue laws against the city by closing the Airport Gift Shop, he did move a step in that direction when he ordered that all paving contracts with the city must specify that no paving could be done on Houston streets on Sundays. The mayor's new policy, which had been made without the knowledge or consent of the City Council, replaced a longstanding custom of resurfacing downtown streets on Sundays when the traffic downtown was at a minimum. The mayor's ban on Sunday paving came to the public's attention only after the City Council later levied paving assessments against property owners for downtown streets.[144]

Shortly after the mayor's ruling, however, a new charge was levied by the attorney for N. Elmer White and Oral Shockey that the sole motivation for the Sunday closing laws was money. The attorney, Milton Mulitz, argued that "The sole motivation for this towering example of primitive legislation is not health, not morality, not public welfare, but money..."[145]

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[144]"Cutrer Orders End To Sunday Street Paving," Houston Post, Apr. 20, 1961, sec. 3, p. 1.

[145]"Money Motivation For Blue Laws, Brief Claims," Houston Post, May 1, 1961, sec. 1, p. 4.

Mulitz continued:

> For the court to indulge in any lofty assumptions that this law...bears any remote relation to or was motivated by the slightest concern for individual public health or morality (while at the same time those swarming errily-lit human anthills, the huge refineries and chemical plants in Houston, continue their relentless night-and-day-seven-days-a-week grind and jolt) is to wrap a rhetorical flag of idealism around a mere cabbage.[146]

Mulitz also attacked the blue laws on the grounds that they were religious laws and were therefore unconstitutional.

While Mulitz was arguing the constitutionality of the laws, several employees of Leonard's Department Stores were appealing their twenty dollar fines to the County Court-at-Law. Earlier in the city's four-month drive against Sunday opening, the employees of the ten-store chain had placed nolo contendere to charges and paid their fines without appealing to a higher court. But, later when fourteen defendants were assessed fines by a Corporation Court judge, they gave notice of appeal to the county court. An attorney for the company, however, denied that the change in policy was brought by County Court-at-Law Judge Billy Ragan's ruling that corporation employees were exempt from the blue laws.[147]

Another blue law critic, Robin R. Graves, complained that the laws were creating a financial burden for him

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[146] Ibid.

[147] "Leonard's Appeals Fines In 7 Blue Law Actions," Houston Post, May 2, 1961, sec. 1, p. 12.

because of a fifty dollar increase in city taxes on his drive-in grocery. Graves told the City of Houston tax board of appraisement that "If you don't drop these blue laws, I'm not going to be able to make enough money to pay my taxes."[148] The owner said that a small grocery, such as his depended on Sunday and after usual closing hour operations. Graves further said that he had been informed by the mayor's office that he could sell "milk, ice cream and ice on Sunday" and not be in violation of the law.

Mayor Lewis Cutrer, as chief administrator and enforcer, had interpreted the laws so as to permit the selling of foods from grocery shelves on Sunday. But, while the mayor's Blue Law Squads had ignored the sellers of foodstuffs, the vigilantes had filed charges against many of them and some had been convicted for selling foods in violation of the laws. Therefore, Graves said he had closed his store on some Sundays but on others had opened after 1 P. M. to sell beer, which was permissible under the law.[149]

Despite the strong public opposition to the Sunday closing laws, the overcrowded court dockets, and the disagreement among public officials over how and against whom the laws should be enforced, Mayor Lewis Cutrer said that the

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[148]"Tax Protest Hinges On Blue Law Action," Houston Post, May 19, 1961, sec. 5, p. 5.

[149]Ibid.

blue law enforcement would continue. And, although violators continued to be filed upon, there was a noticeable drop in the number of Blue Law Squad officers in operation each Sunday as well as a decline in the number of violators reported by police. Along with this decline, however, was increasing pressure on the legislature, primarily from the mayor who was trying to extricate himself from his troubles, to amend and make them more equitable.

Although the House adopted a resolution, authored by Representative W. H. Miller of Houston, to establish a five-member iterim committee to study Texas Sunday laws, when it became apparent that the committee would not make its report until after the next legislature convened, Mayor Cutrer said that the blue law enforcement would have to continue under the existing laws. "If no changes are made in the laws, I will have to enforce them," the mayor said.[150]

One week after the mayor made his remarks, the United States Supreme Court handed down four separate rulings upholding the constitutionality of blue laws in Maryland, Massachusetts, and Pennsylvania.[151] Although the Court's ruling had little direct effect on the Houston blue law, it obviously provided additional incentive for action to be

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[150] "Blue Law Enforcement Must Go On, Mayor Says," Houston Post, May 23, 1961, sec. 3, p. 8.

[151] These cases are discussed briefly in Chapter V.

taken on the bills already pending before the Texas Legislature. Mayor Cutrer, who was exalted over the court's ruling, said "The high court is just upholding a tradition of this nation that we've had from its very inception."[152] And, in the mayor's opinion

> Texas laws are just as valid as those of the other three states, and ours are even broader. They allow a person who observes some other day other than Sunday as the Sabbath, to work on Sunday as long as he observes some other day.[153]

But, the mayor's enforcement program received another set-back when County Court-at-Law Judge Billy Ragan quashed his twenty-third blue law complaint, ruling, as he had done in the past, that the statutes did not apply to corporations. Earlier, Assistant District Attorney Walter A. Carr had requested an opinion from Attorney General Will Wilson concerning the legal status of corporation employees. While the Attorney General was still studying the matter, Judge Ragan was ruling that corporation employees were not covered by the statutes. Thus far, the judge had quashed twelve complaints against Mike Persia employees and eleven against employees of J. Weingarten, Inc.[154]

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[152]"Cutrer Is Elated Over Decision on Blue Law," Houston Post, May 30, 1961, sec. 1, p. 6.

[153]Ibid.

[154]"Wilson Blue Law Ruling Pends; 23rd Case Voided," Houston Post, June 15, 1961, sec. 1, p. 17.

An examination of the total number of charges which had been filed against blue law violators and the number of convictions which had resulted from those charges showed that the mayor's enforcement campaign was far from being successful. By the latter part of June, for example, more than 500 blue law charges had been filed in Houston since Mayor Cutrer began enforcing the laws. Of the 500 charges, over 200 convictions had been handed down in the Corporation Court with fines being levied against the violators. More than 100 of the convictions had been appealed to the county courts where only one appellant, Oral Shockey, was found guilty. Of those convictions appealed, only twenty-six had been disposed of by the county courts. Twenty-four had been quashed by Judge Ragan, one defendant had been acquitted, and one convicted.[155]

In most cases, when a blue law appeal would come up on a county court docket it was merely reset for a later time. And, many were being reset over and over again. Following the Supreme Court's ruling, however, there was a noticeable flow of blue law appeals from county courts back to the Corporation Court. In some cases, the defendants would decide not to go through with the appeals. In other cases, no one would show up in the county court when a blue law case came up for trial and the court would order the case back to the Corporation Court. According to the chief clerk of the

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[155]Ericson, "From Religion to Commerce," p. 57.

Corporation Court, the city had received back at least twenty such cases which had once been appealed.[156]

Shortly after Judge Ragan quashed his twenty-fourth blue law case, the Harris County district attorney's office received an eighteen page opinion from Attorney General Will Wilson, stating that the Sunday closing laws did apply to the employees of corporations. Judge Ragan refused to be bound by the Attorney General's opinion, however, saying "I will continue to rule as I have until the Court of Criminal Appeals acts to the contrary."[157] But, the judge's statement brought an angry response from the First Assistant District Attorney Wallace C. Moore, who threatened to have all the cased quashed by Judge Ragan refiled in the county court. Moore said if any such cases came up again in Judge Ragan's court, he would ask the judge's permission to have them transferred to other courts. And, if the judge refused to have the cases refiled Moore said "We'll just refile them and refile them and refile them until they fall into the other courts."[158]

Nevertheless, Judge Ragan carried out his threat to continue ruling as he had in the past when he quashed his

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[156] Ibid.

[157] "Ragan to Await Blue Law Edict in Appellate Court," Houston Post, June 21, 1961, sec. 1, p. 8.

[158] Ibid.

twenty-fifth Sunday case involving an employee of the Mike Persia Chevrolet Corporation.[159] The employee, Edgar Lee Richardson, was appealing his $25 conviction from the Corporation Court on grounds that the laws did not apply to the employees of a corporation. Richardson's conviction had resulted from a charge three month's earlier of opening the firm for business on Sunday.

But, with the Supreme Court's ruling upholding the constitutionality of Sunday laws in other states and with the state legislature considering possible revision of the laws, Mayor Cutrer continued to press for the continuation of his blue law campaign by operating a Blue Law Squad, usually consisting of about six officers, each week. During the first Sunday in July, for example, six officers visited nine stores which were open and reported that nine charges of being open on Sunday and one charge of selling on Sunday would possibly be filed.[160] The following week six officers visited three hardware stores, four department stores, a pharmacy, and a general merchandise auction. They reported finding ten violations of being open on Sunday and three violations of selling on Sunday. In addition, the officers made lists of

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[159]"Judge Ragan Quashes 25th Sunday Case," Houston Post, June 22, 1961, sec. 3, p. 6.

[160]"Blue Law Squad Checks 9 Stores," Houston Post, July 3, 1961, sec. 1, p. 6.

establishments they saw open, but did not have time to check. The officers were ordered to make the lists for future use.[161]

Later, however, County Court-at-Law Judge George Miller quashed a blue law complaint against a Leonard's Department Store employee because the complaint said the man was an agent for the firm in keeping it open on Sunday, instead of saying he was acting as agent. The employee, Claud Gilliam, was appealing his conviction in Corporation Court of keeping a Leonard's Department Store open on Sunday. An affidavit signed by Abe Weiner, head of the Leonard stores, was introduced as Gilliam's legal position in the case. The complaint against Gilliam was quashed after the state prosecutor agreed with the defense attorney that the complaint was improperly worded. Thus, a legal precedent had been established for similar dismissals in other blue law cases which had been filed since the U. S. Supreme Court upheld the constitutionality of the laws two months earlier.[162]

While county court judges were quashing a large percent of the cases appealed to their courts, Mayor Cutrer, who was hoping to impress the state legislature for the need of revising the laws during the special session, was continuing to

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[161] "Blue Law Squad Lists Violations," Houston Post, July 10, 1961, sec. 1, p. 2.

[162] "Blue Law Complaint Out on Technicality," Houston Post, July 13, 1961, sec. 6, p. 1.

operate a Blue Law Squad each Sunday. On July 24 six officers visited thirty-three businesses and reported finding thirteen violations of the Sunday closing law. The next Sunday the squad reported finding fourteen businesses open which made ten sales ranging from a life preserver to women's lingerie. The complaints were referred, as had been the procedure in the past, to the city attorney's office for disposition.[163]

Less than one week prior to Governor's signing a new Sunday closing bill, six Blue Law Squad officers visited thirty-five businesses and filed eleven reports for being open and seven for illegal selling on Sunday. Those cited for illegal selling included a hardware store, a grocery store, and five department stores. The locations visited which were not open included ten drugstores, eleven grocery stores, two automobile supply houses and one nursery. All of the reports were sent to Marion Leach, city prosecutor, who was responsible for deciding which of the violators would be charged.[164]

Judge George E. Miller quashed two more blue law cases a short time later, however, on the grounds that the complaints

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[163]"10 Sales Spotted By Sunday Squad," Houston Post, July 31, 1961, sec. 2, p. 6.

[164]"Blue Law Squad Makes 35 Calls," Houston Post, Aug. 7, 1961, sec. 1, p. 9.

were faulty.[165] Pleading as he had in two previous cases, Defense Attorney Edmund L. Cogburn argued that the complaints should have said that the defendant, Harry Smith, was acting as an agent for Leonard's Department Store, instead of naming him as agent. Smith, a manager of the Jensen Drive store, was appealing his $20 fine which had been assessed earlier in Corporation Court. But, District Attorney Frank Briscoe said that the cases which had been quashed on appeal in county courts because the wording was faulty would be filed later.[166]

Although several appeals cases had been sent back to Corporation Court on a writ of procendendo, thus allowing the original conviction and fines to stand against the defendant, the county courts continued to rule that unless it was clearly shown that the manager was the agent of a company he was not liable under the closing laws. Accordingly, Judge Jimmie Duncan dismissed nine additional cases involving charges against the managers and assistant managers of Leonard's Department Stores for keeping their stores open on Sunday. In two other cases, the store employees pleaded guilty to selling merchandise on Sunday and were fined $20 each. Even

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[165] "2 More Blue Law Cases Quashed," Houston Post, Aug. 9, 1961, sec. 2, p. 8.

[166] "Pettigrew Blue Law Appeals Sent Back, Fines To Stand," Houston Post, Aug. 11, 1961, sec. 6, p. 1.

though the employees had appealed Corporation Court convictions, they changed their minds and plead guilty after the Supreme Court's ruling that state blue laws were constitutional.[167]

Thus, after more than eight months of blue law enforcement, the seemingly inescapable conclusion is that the Houston controversy indicates that the laws were not enforced by policing authority large enough to do the job without undue discrimination against offenders. Also, it appears to have acheived more publicity for blue laws and the city officials involved than for the successful prosecution of blue law violators. Furthermore, this controversy in Houston led directly to the enactment of new blue law legislation by the Fifty-seventh Legislature in 1961.

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[167]"County Court Dismisses 9 Appeals on Blue Laws," Houston Post, Aug. 16, 1961, sec. 3, p. 3.

CHAPTER V

1961 U. S. SUPREME COURT DECISIONS

In 1961 the United States Supreme Court pondered the legality of state blue laws for the first time since the turn of the century. On May 29, 1961, the High Court ruled in decisions of varying majorities, that the blue laws of Massachusetts, Pennsylvania, and Maryland[1] did not violate the First Amendment which prohibits laws respecting the establishment of religion or prohibiting the free exercise of one's beliefs. Since the Supreme Court's decisions gave obvious sanction to state blue laws,[2] including Texas, for the first time in over fifty years, a brief discussion of each of these cases will follow.

In McGowan v. Maryland, the employees of a large department store were convicted in Maryland State Court for selling on Sunday certain items in violation of the state's Sunday closing laws. On appeal, the U. S. Supreme Court ruled

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[1] McGowan v. Maryland, 366 U. S. 420; 6 L. Ed. 2d. 393 (1961); Two Guys from Harrison v. McGinley, 366 U. S. 582; 6 L. Ed. 2d. 551 (1961); Braunfeld v. Brown, 366 U. S. 599; 6 L. Ed. 563 (1961); Gallagher v. Crown Kosher Super Market, 366 U. S. 617; 6 L. Ed. 2d. 536 (1961).

[2] In 1961, forty-nine of the fifty states had some kind of blue law in force. The one exception was Alaska. McGowan v. Maryland, 366, U. S. 420, 495, 553-59; 6 L. Ed. 393, (1961).

that the law did not violate either the Equal Protection or Due Process Clause of the Fourteenth Amendment. Nor did it constitute a law respecting the establishment of religion, within the meaning of the First Amendment.[3]

In McGowan, as in "Doremus v. Board of Education... where complainants failed to show direct and particular economic detriment," the appellants "concededly have suffered direct injury, allegedly due to the imposition on them of the Christian religion."[4] Justice Warren, speaking for the majority of the Court, said,

> The essence of appellant's 'establishment' argument is that Sunday is the Sabbath day of the predominant Christian sects; that the purpose of the enforced stoppage of labor on that day is to facilitate and encourage church attendance; that the purpose of setting Sunday as a day of universal rest is to induce people with no religion...to join the predominant sects...and aid the conduct of church services and religious observance of the sacred day.[5]

The Court agreed that the original laws dealing with Sunday labor were motivated by religious forces, but it ruled that present Sunday legislation has undergone extensive changes and no longer retains its religious character. Although the origin of these laws were strongly religious, the Court said by the eighteenth century the nonreligious

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[3] Ibid., 366 U. S. 420, 429; 6 L. Ed. 2d. 393, 401 (1961).

[4] Ibid., 366 U. S. 420, 430; 6 L. Ed. 2d. 393, 402 (1961).

[5] Ibid., 366 U. S. 420, 431; 6 L. Ed. 2d. 393, 402 (1961).

arguments had become more widespread, and the statutes had begun to lose their totally religious flavor.

The Court pointed out there was no blanket prohibition against Sunday labor, but that the section which the appellants violated permitted the Sunday sale of tobaccos, sweets, and a long list of Sunday articles.

> These provisions, along with those which permit various sports and entertainments on Sunday, seem clearly to be fashioned for the purpose of providing a Sunday atmosphere of recreation, cheerfulness, repose, and enjoyment.[6]

The opinion of the Court was summed up by Warren's statement that "the air of the day is one of relaxation rather than one of religion."[7] The Court warned, however, that its ruling should not be construed to mean that Sunday legislation could not be a violation of the "Establishment Clause"[8] if it could be shown that its purpose was to use the state's coercive power to aid religion. But, the Court failed to show reason why any day other than Sunday would not be just as good to set aside for purposes of relaxation and enjoyment. This decision by the Court appears to be in contradiction to the

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[6] Ibid., 366 U. S. 420, 448; 6 L. Ed. 2d. 393, 412 (1961).

[7] Ibid.

[8] The "Establishment Clause" of the First Amendment prohibits either the federal or state governments from passing laws which are designed to aid one religion or prefer one religion over another. See Everson v. Board of Education, 330 U. S. 1, 15; 91 L. Ed. 711, 723 (1947).

decision in Everson v. Board of Education where the Court ruled that neither a state government nor the federal government could pass laws which in any way would aid one religion or prefer one religion over another.

The only dissenting opinion in McGowan was made by Justice Douglas. He maintained the question was not whether one day out of seven could be imposed by a state as a day of rest. Neither was it a question whether Sunday could by force of custom and habit be retained as a day of rest. The question was whether the state could

> impose criminal sanctions on those who, unlike the Christian majority..., worship on a different day or do not share the religious scruples of the majority.[9]

He questioned the authority of a state to make

> protesting citizens refrain from doing innocent acts on Sunday because the doing of those acts offends sentiments of their Christian neighbors.[10]

In an attempt to discredit the constitutionality of the Sunday laws, Douglas said the issue would be in better focus if one could imagine a state legislature, controlled by Orthodox Jews and Seventh-day Adventists, which might pass a law making it a crime to conduct business on Saturdays. He asked the question whether a Baptist, Catholic, Presbyterian, or Methodist would be compelled to obey that law, go to jail,

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[9] McGowan v. Maryland, 366 U. S. 420, 561; 6 L. Ed. 2d. 393, 524 (1961)

[10] Ibid., 366 U. S. 420, 562; 6 L. Ed. 2d. 393, 525 (1961).

or pay a fine.[11]

First quoting a portion of the Fourth Commandment which states in part that "The seventh day is the sabbath of the Lord thy God...," Douglas carefully traced the historical evolution of Sunday closing laws. He said:

> This religious mandate for observance of the Seventh Day became, under Emperor Constantine, a mandate for observance of the First Day in conformity with the practice of the Christian Church.[12]

The justice pointed out that although this religious mandate has had a checkered history, being enforced by both ecclesiastical and civil authorities, it has been passed down to the present generation through the centuries. The general pattern of these laws in the United States, however, was set in the eighteenth century and came from a seventeenth century statute.

In Two Guys v. McGinley,[13] the Court ruled that Pennsylvania's Sunday closing laws did not violate the Establishment Clause of the First Amendment. The appellant, a corporation operating a large discount department store in Lehigh County, sued in a Federal District Court to enjoin the enforcement of certain Pennsylvania Sunday closing laws.

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[11] Ibid., 366 U. S. 420, 565; 6 L. Ed. 2d. 393, 526 (1961).

[12] Ibid., 366 U. S. 420, 566; 6 L. Ed. 2d. 393, 527 (1961).

[13] Two Guys v. McGinley, 366 U. S. 582; 6 L. Ed. 2d. 551 (1961).

The two laws being challenged were a 1939 statute, which prohibited all worldly employment or business on Sunday, and a 1959 supplementary statute which forbade the retail sale on Sunday of twenty specified items.

Chief Justice Warren, delivering the opinion of the Court, ruled that the 1959 statute did not violate the Equal Protection Clause of the Fourteenth Amendment. The Court said that the appellants had overlooked "the fact that the 1939...statute prohibits all worldly employment or business, with narrowly drawn exceptions." The 1959 enactment was only a supplement to the earlier statute. Since the appellant alleged only economic injury, the Court said the corporation had no standing to raise the question whether the statute prohibits the free exercise of religion. In addition, a careful examination of the legislation, the relevant judicial characterizations, and the legislative history leading to the passage of the 1959 statute, revealed that the act was not a law respecting an establishment of religion within the meaning of the First Amendment.[14] Justice Douglas, however, dissented from the Court's opinion for the same reasons as in the McGowan case.

One of the three companion cases to McGowan was Braunfeld v. Brown, which resulted in a much narrower decision

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[14] Ibid., 366 U. S. 582-98; 6 L. Ed. 2d. 551-61 (1961).

of five to four. In this case the plaintiffs were Orthodox Jews whose religious beliefs required them to close their businesses from sunset Friday until sunset Saturday. They sued to enjoin the enforcement of a 1959 criminal statute in Pennsylvania which prohibited the retail sale of specified items on Sunday. The plaintiffs claimed the statute violated the Equal Protection Clause of the Fourteenth Amendment, that it interfered with the free exercise of religion by imposing serious economic disadvantages upon them, and that it constituted a law respecting an establishment of religion.[15]

Chief Justice Warren, again speaking for the majority of the Court, noted that Pennsylvania might have exempted Sabbatarians from the operation of the Sunday closing law, but he denied that the law infringed upon the plaintiffs free exercise of religion. The Court said that the law "does not inconvenience all members of the Orthodox Jewish faith but only those who believe it necessary to work on Sunday." It further stated that the wisdom of the Pennsylvania statute was not a proper matter for the Court's consideration and that, in any event, to all those

> who rest on a day other than Sunday to keep their business open...might well provide (them) with an economic advantage over their competitors who must remain closed on that day.[16]

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[15] Braunfeld v. Brown, 366 U. S. 599, 601; 6 L. Ed. 2d. 563, 565 (1961).

[16] Ibid., 366 U. S. 599, 605, 608-09; 6 L. Ed. 2d. 563, 568-69 (1961).

In a dissenting opinion Justice Brennan pointed out that the law was not only an infringement upon the plaintiff's religious beliefs, but it also put those who observe the seventh day at an economic disadvantage. Therefore, the law's effect is that "no one may at...the same time be an Orthodox Jew and compete effectively with his Sunday-observing fellow tradesmen." He called this a "clog upon the exercise of religion" which "has exactly the same economic effect as a tax levied upon the sale of religious literature." Justice Stewart concurred with Brennan's opinion but added that "Pennsylvania has passed a law which compels an Orthodox Jew to choose between his religious faith and his economic survival. That is a cruel choice."[17]

In Gallagher v. Crown Kosher Super Market, the appellees were members of the Orthodox Jewish Faith whose religion not only forbade them to do business on their Sabbath but also required them to eat kosher food. A group of orthodox rabbis and a corporation selling kosher food, mainly to Jewish customers, sued in a Federal District Court to enjoin as unconstitutional the enforcement of the Massachusetts Sunday closing laws, which generally forbade the keeping open of shops and the doing of any labor, business, or work on Sunday. Although the store had previously been open for

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[17] Ibid., 366 U. S. 599, 613, 616; 6 L. Ed. 2d. 563, 572, 574 (1961).

business all day on Sunday and had done about a third of its weekly busineess on that day, these laws had been construed as forbidding the corporation to keep its store open on Sundays, except for the sale of kosher meat until 10 A. M. The store had been closed from sundown on Saturdays, and the corporation claimed that it was economically impractical to keep open on Saturday nights and until 10 A. M. on Sundays.[18]

Chief Justice Warren, delivering the opinion for the majority of the Court, ruled that the statutes involved did not violate the Equal Protection Clause of the Fourteenth Amendment, and they were not laws respecting the establishment of religion or prohibiting the free exercise thereof, within the meaning of the First Amendment. The Court pointed out that although the law did forbid

> the keeping open of shops and the doing of any labor, business, or work on Sunday, works of necessity and charity are exempted as well as the operation of certain public utilities.[19]

The statute also provided exemptions for the retail sale and making of bread by certain dealers at given hours, the retail sale of frozen desserts, confectioneries and fruits by various listed sellers, and the retail sale of tobacco by vendors. Although the law generally barred games and sports

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[18] Gallagher v. Crown Kosher Super Market, 366 U. S. 617-19; 6 L. Ed. 2d. 536-37 (1961).

[19] Ibid., 366 U. S. 617, 619, 624-30; 6 L. Ed. 2d. 536, 538, 540-44 (1961).

on Sundays, "professional sports may be played between 1:30 P. M. and 6:30 P. M., and indoor hockey and basketball any time after 1:30 P. M...." Golfing, tennis playing, dancing at church weddings, concerts of sacred music, and the celebration of religious customs of rituals were permitted on Sunday as well as the operation of miniature golf courses and golf driving ranges after 1:00 P. M.[20]

The Court ruled that the equal protection arguments made by the appellees were much the same as those made by the appellees in McGowan v. Maryland. Although the Massachusetts Sunday laws were of a religious origin, the Court said that a change had come about in 1782 and "the statute's announced purpose was no longer solely religious." The present statutes, "for the most part,...have been divorced from the religious orientation of their predecessors."[21]

The fact the statute permits certain Sunday activities only if they are consistent with the due observance of the day, said the Court, does not necessarily mean that the day is to be religious. "The 'character' of the day would appear more likely to be intended to be one of repose and recreation."[22] Therefore, neither the purpose nor the effect of

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[20] Ibid., 366 U. S. 617, 619-21; 6 L. Ed. 2d. 536, 538 (1961).

[21] Ibid., 366 U. S. 617, 622, 626; 6 L. Ed. 2d. 536, 539, 541-42 (1961).

[22] Ibid., 366 U. S. 617, 627; 6 L. Ed. 2d. 536, 542 (1961).

the statute was found to be religious. The allegations that the Sunday closing laws prohibit the free exercise of religion were dismissed by the Court as being similar to those in Braunfeld. Justices Brennan and Stewart, on the otherhand, dissented from the Court's opinion for the same reason they did in Braunfeld.

The final Sunday closing law case to come before the Supreme Court was Arlan's Department Store v. Kentucky in 1962, and the appeal was dismissed for lack of a substantial federal question. In this case, the owners of three retail stores in Kentucky were fined for employing people in their businesses on Sunday in violation of a Kentucky statute. The owners' convictions were sustained against their claim that the statute violated the First Amendment, which was applicable to the states by reason of the Fourteenth Amendment.[23]

Justice Douglas once again dissented, holding that this case differed from Braunfeld v. Brown and Gallagher v. Kosher in that "those who actually observe the Sabbath on a day of the week other than Sunday are exempt from the penal provisions" of the statute. Douglas questioned the authority of the government to "compel one person not to work on Sunday because the majority of the populace deems Sunday a holy day." He pointed out that the religious nature of the statute is

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[23] Arlan's Department Store v. Kentucky, 371 U. S. 218-19; 9 L. Ed. 264-65 (1962).

emphasized by the fact that it exempts those "members of a religious society" who actually observe the Sabbath on a day other than Sunday.[24]

The Court's decision was an obvious contradiction to the position taken by the Court in the previous cases where it was decided that Sunday laws had lost their religious idenity and were now more recreational than religious in character. According to Douglas,

> The law is...plainly an aid to all organized religions, bringing to heel anyone who violates the religious scruples of the majority by seeking his salvation not through organized religion but on his own.[25]

Before 1961, the United States Supreme Court had twice upheld the constitutionality of blue laws, once in 1895 against the charge that they conflicted with the interstate commerce clause and again in 1900 against the charge that they violated the equal protection of the laws clause. The position that it is constitutional to enforce a day of rest as an expression of national religious tradition sanctioned in common law had apparently been abandoned, however, in favor of an interpretation that enforcement is based on the police power of the state. And, Chief Justice Earl Warren, speaking for the majority of the Court in all of the four cases, held that the statutes were not religious in either purpose

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[24] Ibid., 371 U. S. 218-20; 9 L. Ed. 264-66 (1962).

[25] Ibid.

or effect.[26]

Although no case involving a Texas blue law had ever reached the U. S. Supreme Court, the High Court's decision upholding the constitutionality of blue laws in various states gave legal sanction to similar laws in Texas, which date back to 1863. Shortly after the Supreme Court's ruling in 1961, the Fifty-seventh Legislature enacted a law, during the special session of the legislature, creating sweeping new regulations of Sunday business and providing stiffer penalties for violations than had any previous Texas blue law.

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[26]Ericson, "From Religion to Commerce," p. 53.

CHAPTER VI

RECENT DEVELOPMENTS

With the obvious sanction of both the state and national courts and faced with the rapid growth of discount stores, the Texas Legislature evidenced renewed interest in blue laws in 1961. Competition from large discount stores and from outlying shopping centers, both of which did much of their business on Sunday, resulted in downtown merchants renewing their campaign for more vigorous enforcement of Sunday legislation. They found willing allies in church and other religious groups, and the two, along with Houston's Mayor Lewis Cutrer, exerted compelling pressures on the Fifty-seventh Legislature to enact new legislation creating sweeping new regulations of Sunday business and providing stiffer penalties for violations of the state blue law.[1]

Although two bills designed to supplement existing Sunday laws had been introduced during the regular session of the Fifty-seventh Legislature, both bills were lost in the furor created by the adoption of the first general sales tax in the state's history. In a subsequent special session, however, the bill which had been introduced in the Senate during the regular session was again offered and passed with

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[1]Ericson, "From Religion to Commerce," p. 53.

only a slight amendment.[2]

Earlier, the Texas Retail Federation had held its annual meeting in Houston and then sent a delegation to Governor Price Daniel seeking help in strengthening the hand of officials who were trying to enforce the Sunday closing laws. Jenkins Garrett of Fort Worth, who was chairman of the federation, said that the delegation which met with the governor informed him that it was their "collective opinion there is a great need of strengthening the Sunday closing laws."[3] Garrett said the governor told the delegation, however, that no subject matter outside that of fiscal matters would be presented to the legislature.

Nevertheless, the Senate, by a vote of 16 to 6, suspended the rules to allow Senator William T. Moore of Bryan to take up his bill out of regular order. The bill, which Senator Moore said would modernize the antiquated Texas blue laws, listed a number of items which could not be sold on Sunday. But, it did not prohibit the sale of food, ice, drugs, newspapers, beer, or automobiles.

Even though Senator Moore said that his bill would not

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[2]Texas Legislature, House Journal, 57th Legislature, 1st called session, (1961), pp. 877-881; Texas Legislature, Senate Journal, 57th Legislature, 1st called session, (1961), pp. 262-63.

[3]"Finance, Not Blue Laws, Is Problem, Daniel Says," Houston Post, July 13, 1961, sec. 1, p. 5.

repeal any of the existing blue laws but would simply bring them up to date, a storm of debate blew up in the Senate over Moore's Sunday closing bill. While the Moore bill did not include automobiles, an amendment by Senator Galloway Calhoun of Tyler added automobiles to the list of commodities which could not be sold on Sundays. Senator Moore opposed Calhoun's amendment, however, predicting that it would kill the bill.[4]

But, the Senate defeated an amendment by Senator Doyle Willis of Fort Worth to prohibit the sale of beer on Sundays and another, by Senator Bruce Reagan of Corpus Christi, to prohibit the sale of soaps, detergents, and paper products. Also, sporting goods and accessories, beach apparel, and funeral services were added to the exempt list. And, the Senate adopted an amendment by Senator W. N. Patman of Ganado which said that a merchant would not be guilty of "offering for sale" items which were merely displayed on a shelf on Sunday. According to Patman, the amendment would keep drive-in grocers from having to remove non-food items from their shelves if they remained open on Sundays.[5]

In addition, another amendment by Senator Calhoun, striking out a provision which exempted persons from closing on

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[4]"Salons Put Off Sunday Bill Action," Houston Post, July 29, 1961, sec. 1, p. 1.

[5]Ibid.

Sunday if they observe some other day as the Sabbath, was defeated by a vote of eighteen to five. Calhoun argued that the bill gave Seventh-day Adventists, Jews, and others who observe a different day as the Sabbath an unfair economic advantage. According to the senator, "You are creating a Sunday monopoly for them."[6] But, he said that he would not object if the bill required them to close on another day of the week.

The Moore bill specified that

> If it be shown upon the trial of a case under this act, by the accused, that he conscientiously believes in and uniformly observes another day of the week as the Sabbath and that he does not personally, or through others, conduct or engage in business on that day, this act shall not apply to such person.[7]

Senator Moore, speaking against Calhoun's amendment, said that the amendment would force conscientious believers in another Sabbath day to close two days a week. He argued that "This is an economic measure, not a moral issue." And, the senator emphasized that "We're trying to maintain the status quo that prevailed before these discount houses came down here from the East and disrupted our way of business."[8]

Similarly, Senator George Parkhouse of Dallas, an ardent

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[6] Ibid.

[7] Ibid., pp. 1, 4.

[8] Ibid., p. 4

supporter of the bill, said that it was "not fair for a bunch of Northerners to come down here and disrupt our old, established methods of operation."[9] Senator Dorsey Hardeman of San Angelo, however, said there were already Sunday closing laws on the books and that they just needed to be enforced. In the senator's words "All we need to do now is for these great courageous moralists, headed by the senator from Brazos, to walk into the courthouse and file a complaint." Hardeman further pointed out that "the mayor of Houston is trying to enforce the law, but the people don't like it." According to Hardeman, the Moore bill would supersede all the previous Sunday closing laws, and was "so plainly unconstitutional that even the present Court of Criminal Appeals would be forced to find it so."[10]

Nevertheless, Senator Moore steered the bill through a shoal of amendments, accepting some, defeating some, and having others forced on him. The drive, however, was not strong enough to push the measure to final passage. Instead, the Senate broke off in the middle of discussion and adjourned until the following Monday.

Meanwhile, the House was considering its own Sunday closing law bill. After lengthy testimony the House State Affairs

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[9] Ibid.

[10] Ibid.

Committee sent to a subcommittee for further study the version of the Sunday closing bill introduced earlier by Representatives Tommy Shannon and George Richardson of Fort Worth.[11]

Appearing before the House to speak against the measure were Arthur Leach of the Houston Council of Seventh-day Adventists and W. S. Hancock, executive secretary of the Texas Religious Liberty Association of Fort Worth. Hancock told the committee that the Religious Liberty Association was concerned with "helping uphold and maintaining the privileges of our country, the separation of church and state." He said if the reasons for the Sunday blue laws were solely economic, then "let's not hide behind the skirts of the church."[12] Also opposing the bill, Arthur Leach pointed out that thirty-seven per cent of the Texas population belonged to no church. He maintained their rights would be violated if the bill was enacted. Jenkins Garrett of Fort Worth, who represented the Texas Retail Federation, however, spoke in behalf of the measure and said it would provide a "surcease from work for employees."[13]

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[11]The subcommittee members named were Representatives George Richardson, W. H. Pieratt of Giddings, and Alonzo W. Jamison of Denton.

[12]"Blue Law Bill Is Sent To Subcommittee for Study," Houston Post, Aug. 1, 1961, sec. 1, p. 2.

[13]Ibid.

The following day the Senate, in contrast to the acrimonious debate over the bill the previous week, passed the Moore bill, Senate Bill No. 35, by a voice vote and sent it to the House. The bill, which was given swift and uneventful passage, exempted Seventh-day Adventists and others who conscientiously believed in observing as the Sabbath a day other than Sunday. It listed a number of commodities which could not be sold on Sunday, including automobiles, wearing apparel, house furnishings, appliances, luggage, jewelry, and other household items. But, the bill exempted such commodities as food, beer, drugs, beach apparel, ice, newspapers, magazines, and sporting goods.[14]

The Moore bill made the sale of prohibited articles on Sunday a misdemeanor, punishable by a $100 fine for the first offense, and a jail sentence not to exceed six months, or a fine up to $500, for succeeding offenses. Moore and other supporters of the bill admitted that one of the main purposes of the legislation was to protect old, established merchants from the "discount houses" which had recently moved into many Texas cities from the North and East, many of which were staying open on Sunday.

Two days later the House, by a vote of ninety-four to thirty-nine, passed on the second of three required readings

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[14]"Moore Blue Law Bill Wins on Voice Vote," Houston Post, Aug. 2, 1961, sec. 1, p. 2.

an amended version of the Senate bill. An amendment by Representative Jim Markgraf of Scurry, however, provided that any business could sell the items enumerated in the Moore bill either on Saturday or Sunday, but not on both days. But, the House tabled an amendment by Representative Joe Chapman of Sulphur Springs which would have allowed business operators to decide what day they want to close during a seven day period.[15]

Chapman told the House that he thought it was "very foolish to even consider a Sunday closing law during a special session." He argued that

> All this bill is aimed at is regulating competition. This entire matter is an out-growth of the fight between downtown department stores and suburban discount stores.[16]

Meanwhile, Representative Wayne Gibbons of Breckenridge, along with Murray Watson of Mart, tried to amend the measure so that cities and towns could decide the matter by local option. The House shelved the proposition, however, by a vote of sixty-two to seventy-three.

Representative Paul Floyd was the only member in the Harris County delegation who refused to vote for engrossment of the bill. Floyd said that he felt the bill, as

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[15] "Optional Sunday Closing Bill Advanced in House," Houston Post, Aug. 4, 1961, sec. 1, p. 10.

[16] Ibid.

amended was unenforceable. His opposition was based on the fact that it would require every business to be checked two days instead one, therefore doubling the enforcement load.[17]

Later, several House members attempted to amend the bill even furtner but were unsuccessful. Representative Joe Chapman of Sulphur Springs, who had fought the bill from the outset, sponsored an amendment which would have exempted nursery and landscape businesses from the provision of the bill. And, Representative George T. Hinson of Mineola carried the fight for an amendment which would have brought beer and intoxicating beverages under the bill. The House tabled the Hinson amendment, however, by a vote of seventy-two to sixty-four.

Obviously angered by the defeat, Hinson said, "I cannot see how this House can stand by and exempt beer for mama and papa but not the three-cornered pants for baby."[18] The representative's remarks, however, prompted Representative R. A. Bartram of New Braunfels to suggest that Hinson "go back to your dry district and see that all the bootleggers don't sell on Sunday." Bartram further claimed that the Hinson amendment was only designed to kill the bill.[19]

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[17] Ibid.

[18] "2-Day-Choice Blue Law Sent to Daniel," Houston Post, Aug. 8, 1961, sec. 1, pp. 1, 9.

[19] Ibid., p. 9.

Nevertheless, the House passed the Moore bill by a vote of ninety-five to forty-two. In amending the bill, however, the House included the Saturday or Sunday option for merchants, as well as providing an exemption clause for occasional sales. An amendment, which was incorporated into the bill on the third reading and adopted by unanimous consent, made the following provision:

> When a purchaser will certify in writing that a purchase of an item of personal property is needed as an emergency for the welfare, health or safety of human or animal life and such purchase is an emergency purchase to protect the health, welfare or safety of human or animal life, then this Act shall not apply; provided such certification signed by the purchaser is retained by the merchant for proper inspection for a period of one (1) year.[20]

By a vote of twenty-two to eight the Senate concurred in the House amendments to the Sunday closing bill and sent the measure to Governor Price Daniel for his signature. The governor signed the bill on August 12, 1961, and it became effective after the ninety days.[21]

Specifically, the new statute,[22] which became effective on November 8, made it a criminal offense for

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[20]Texas Legislature, House Journal, 57th Legislature, 1st called session, (1961), p. 843.

[21]The Harris County lawmakers voting for the bill included: Representatives Criss Cole, Bob Eckhardt, Don Garrison, Henry Grover, W. H. Miller, Don Shipley, Charles Whitfield, and Senator Robert W. Baker. Only Representative Paul Floyd voted against final passage.

[22]See Article 286(a) in Appendix VIII, pp. 253-55.

> any person, on both the two consecutive days of Saturday and Sunday, to sell or offer for sale or...compel, force or oblige his employees to sell any of the enumerated

articles, which were carefully selected as those constituting the bulk of Sunday business of discount houses.[23] Any sale for charitable purposes, for funeral or burial purposes, or of items sold as part of or in conjunction with the sale of real property, however, was specifically exempt from the act. Also, occasional sales of any item named in the act by a person not engaged in the business of selling such item were exempt. Provision was also made for a sale exempt from the act of any of the named items if the purchaser certified in writing that it was required as an emergency for the welfare, health, or safety of human or animal life.[24]

The penalties for violation of the act were stiffer than in any prior Texas blue law. Under the terms of the 1961

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[23]The articles enumerated were clothing; clothing accessories; wearing apparel; footwear; headwear; home, business, office, or outdoor furniture; kitchenware; kitchen utensils; china; home appliances; stoves; refrigerators; air conditioners; electric fans; radios; television sets; washing machines; driers; cameras; hardware; tools (excluding non-power driven hand tools); jewelry; precious or semi-precious stones; silverware; watches; clocks; luggage; motor vehicles; musical instruments; recordings; toys (excluding novelties and souvenirs); mattresses; bed coverings; household linens; floor coverings; lamps; draperies; blinds; curtains; mirrors; lawn mowers; and cloth piece goods.

[24]Lloyd Lochridge, "Saturday and Sunday Sales Act; New Law Not a 'True Blue' Law," Texas Bar Journal, XXV (February 22, 1962), 117.

statute, the penalty for a first offense was increased to a fine of up to $100. Second and subsequent convictions could be punished by imprisonment in jail not to exceed six months, or by a fine of not more than $500, or both. A violation of the statute would constitute a misdemeanor with each separate sale being a separate offense. In addition, the penalty section provided a means of more effective enforcement. Provision was made for injunctive relief against violation of the act, the operation of any business contrary to provisions of the act being declared a public nuisance.[25]

Although the Texas Saturday or Sunday act originated as a "Sunday" law, protest made during the legislative process by Sabbatarians resulted in the Saturday feature of the act being added and the section dropped which would have excused a Sabbatarian from compliance with the act. Therefore, both proponents and opponents of the new statute emphasized that it was not a blue law in the true sense. Instead, it was a six-day business-week law imposed on the merchandising of forty-two specifically enumerated types of articles.

Nevertheless, some rather pertinent questions immediately became apparent as a result of the new legislation. For example, would the standing rule of law apply that the new statute repealed by implication any prior one in conflict as

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[25] Ibid.

to specific details? If store operators stayed open, but did not sell any of the prohibited items, would they be liable for protection? What would be done to the counter or open display of goods on both days which could not be sold on both days? Would not the effectiveness of the law depend almost entirely upon its enforcement by the local government, since the legislature made no provision for state law enforcement officials to cover the state and see that none of the forbidden articles were being sold on the official closing days?[26]

Also, there was the question of whether a corporation running two or more stores could operate one store with one set of employees on Saturday and the other store with another set of employees on Sunday. And finally, what if two stores were owned by separate corporations with common stock ownership and one remained open on Saturday and the other on Sunday with both offering for sale the same articles of those enumerated in the act?[27] In short, this most recent legislation suffered from the same inherent weakness of all blue laws and related legislation, the almost countless difficulties of enforcement.

The new statute was given further clarification, however,

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[26]Ericson, "From Religion to Commerce," p. 54.

[27]Lochridge, "Saturday and Sunday Sales Act," p. 166.

when District Attorney Henry Wade of Dallas asked Attorney General Will Wilson to opine whether a corporation operating more than one store could sell prohibited items in one store on Saturday and in a different store on Sunday. In Wilson's opinion, the act did cover corporations and a corporation could not sell the kind of merchandise specified in Article 286(a) in one store on Saturday and in another store on Sunday.[28] The attorney general further ruled that if a corporation was selling any of the prohibited items on Saturday it would be a violation of the law to accept telephone orders through an agent of any of the articles on Sunday.

The district attorney also pointed out that "another big question is what does hardware, one of the items listed in the law constitute." Wade said the term generally applied to an article consisting of some metal, but that it had been expanded to include many other items. And, he showed the absurdity of the latest Sunday law when he said that auto, radio, and television parts were apparently exempt from the measure, although automobiles and radio and television sets could not be sold on both days. In Wade's words

> We are going to have our hands full enforcing what is specifically named in the law, so we will wait a while to ask about the fringe items.[29]

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[28]Texas. Attorney General of Texas Opinion No. WW-1190 dated Nov. 8, 1961.

[29]"Company Must Close All Stores Same Day," Dallas Morning News, Nov. 10, 1961, sec. 4, p. 1.

In addition, the district attorney, who said he would see to it that the law got full enforcement from his office, emphasized that departmentalized stores would have the problem of establishing a method to show specifically what affected items were not for sale either on Saturday or Sunday. Although the law was aimed mostly at large discount stores, Wade said the stores which would be required to show the affected items not for sale would include primarily grocery and big drug stores.[30]

Two years after Wade asked for the attorney general's ruling about whether a corporation operating more than one store could sell prohibited items in one store on Saturday and in a different store on Sunday, the Texas Supreme Court reversed the ruling of a district court judge who had issued a permanent injunction to enjoin the Criminal District Attorney of Tarrant County from charging Clark's Worth, Inc. of Fort Worth with selling merchandise in violation of the state blue law. Clark's Worth, Inc., which operated three large department stores in Fort Worth, had for several months opened two of its stores on Saturday and closed them on Sunday, while closing the third store on Saturday but opening it on Sunday. Doug Crouch, the Criminal District Attorney of Tarrant County, filed charges against Clark's and its employees,[31] contending

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[30] Ibid.

[31] More than seventy employees had been arrested by Fort

the three operations should be treated as one store. But, Judge Harold Craik, who presided over the 153rd Civil District Court, granted a permanent injunction against Crouch, thus preventing him from forcing the store to comply with the Sunday closing laws.[32]

Clark's Worth, Inc., et al., had filed suit for injunctive relief as well as for damages and a declaratory judgment against Crouch, alleging the store a 2530 North Commerce was not violating any of the provisions of Articles 286 and 287 of Vernon's Annotated Penal Code by staying open on Sunday. The store also charged that "Crouch and his aids and assistants have arrested, caused to be arrested falsely, imprisoned and falsely charged"[33] its employees with violation of the closing laws. And, the employees accused Crouch of harassing them, contending that the district attorney had no intention of taking the cases to court but was arresting the workers for the sole purpose of forcing Clark's to shut its doors on Sunday.

Crouch filed a motion to dismiss the charges, however, alleging that the Civil District Court where the suit was pending lacked jurisdiction in the Clark's suit and was

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Worth officials between July 29, 1962 and September 9, 1962 in their attempts to close the discount stores on Sunday.

[32] Crouch v. Craik, 369 S. W. 2d. 311 (1963).

[33] Ibid., p. 313.

without power to enjoin or restrain him from enforcing the criminal laws of Texas. But, the court overruled the motion to dismiss, and, in an order dated December 10, 1962, after stating that all the allegations in the Clark's Worth petition were accepted as true, held that the district attorney had a "full, adequate and complete remedy to enforce the provisions of the Act (286a), a remedy which would be fair and not oppressive to any of the parties involved."[34]

After a hearing, which began on January 7, 1963, the court denied Clark's Worth any recovery for monetary damages as well as denying it a declaratory judgment, stating that such a judgment was unnecessary in view of the injunctive relief granted them against the district attorney. Final judgment was rendered and entered three weeks later. However, Clark's Worth appealed the portion of the judgment which denied them damages and a declaratory judgment against Crouch. Although the district attorney did not appeal the injunctive relief in favor of Clark's Worth, Inc., on February 8, 1963, Crouch filed a petition in the Texas Supreme Court for a writ of mandamus and prohibition against District Judge Craik.[35]

In effect, Crouch was asking the high court to set aside

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[34] Ibid.

[35] Ibid., p. 314.

the permanent injunction forbidding him from filing further Sunday closing charges against the store's employees. Many observers felt that Crouch was taking a risk by appealing directly to the high court and skipping the ordinary appellate route through the Second Court of Civil Appeals. Crouch defended his decision to by-pass the normal appellate channels, however, saying "I wanted the Supreme Court to decide this in a hurry. That is why I went that way."[36]

Following the supreme court's announcement that it would review the decision resulting in the permanent injunction against him, Crouch revealed that he had discussed his case before all nine supreme court justices in chambers in Austin the Saturday prior to the hearing which began before Judge Craik. The court rejected his petition at that time, which, according to Crouch, "was not because of the merits of the case," but because "They (the justices) felt it would be corrected the following Monday," implying that the supreme court guessed Judge Craik would toss the Clark's petition out of the court.[37]

Arguing before the supreme court were Tarrant County Assistant District Attorneys J. Elwood Winters and Fred Fick. Winters argued that Judge Craik had no authority to tell a

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[36] "DA Predicts Victory In Closing Law Fight," Fort Worth Star Telegram, Feb. 14, 1963, sec. 1, p. 4.

[37] Ibid.

district attorney what to do in law enforcement. The assistant district attorney maintained that the question of harassment and law enforcement tactics were matters which could be decided only in the criminal courts. According to Winters, "If there are charges of harassment in this, then it is an issue of defense, one that should be presented to a jury deciding whether a defendant is guilty or innocent of a law violation."[38] He said that a district attorney would be "hamstrung" to have his enforcement duties approved by a civil district judge and that the court's decision would effect every district attorney in Texas.

In upholding Crouch's petition the supreme court ruled that Judge Craik was

> completely without authority to even suggest that the relator [Doug Crouch], in the exercise of his duties, should proceed under Section 4 of Article 286a or should proceed in accordance with his interpretation of the Penal Code.[39]

The court further stated

> The power and authority to interpret Articles 286, 286a and 287 rest solely with the courts of this state exercising criminal jurisdiction. It is only where a criminal statute is void and vested property rights are being impinged as the result of an attempt to enforce such void statutes that the jurisdiction of the courts of equity can be invoked. That situation does not exist in this case. Therefore, equitable jurisdiction does

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[38]"High Court Hears DA-Judge Dispute," Fort Worth Star Telegram, Mar. 28, 1963, sec. 1, p. 3.

[39]Crouch v. Craik, p. 315.

not exist.[40]

Thus, the court granted the writ of mandamus and prohibition, holding that the order issued by Craik had the effect of enjoining the district attorney "from enforcing or attempting to enforce Articles 286 et al., supra and which has the effect of suspending the operation of such statute is void."

Less than a year later, however, the same court narrowed its ruling that the power and authority to interpret Sunday sales statutes rested solely with courts of the state exercising criminal jurisdiction. In State v. Shoppers World, Inc., the court narrowed its ruling by saying that

> Courts of equity will take jurisdiction to enjoin enforcement of penal laws only in exceptional situations, thus leaving those laws to be interpreted through the criminal trial process whenever possible.[41]

The court's ruling came as the result of action taken by the state to obtain an injunction restraining Shoppers World, Inc. of Corpus Christi from selling certain merchandise on the two consecutive days of Saturday and Sunday. It had been the practice of Shoppers World, Inc. to require all customers who made purchases on Sunday of any item forbidden by Article 286(a) to sign a written certificate which stated the items purchased were needed in an emergency to protect

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[40] Ibid.

[41] State v. Shoppers World, Inc., 380 S. W. 2d. 110 (1964).

the health, welfare, or safety of human or animal life as required by the statute.[42]

This policy was widely publicized by both newspaper advertisements; signs were placed throughout the store on Sundays; and strict orders were given to the store's employees to demand certification by the purchasers. At the check-out stand the customer was requested to list all the items to be purchased on the certificate, and the cashier employed by Shoppers World would read the following statement to the purchaser: "If this purchase is an emergency purchase for the health, welfare, or safety of human or animal life, please sign this certificate."[43] In addition, the store employee would tell the customer

> We ask that you cooperate with us in our compliance with the Sunday blue law, which is admittedly and deliberately designed to lessen your opportunity to save at discount stores such as Shoppers World, a law which we disapprove of as unfair and contrary to the American way of life, but nevertheless, a law which we must and will obey until you change it.[44]

If the purchaser signed the certificate without hesitancy, the sale was made without any further explanation or inquiry. But, when a purchaser refused to sign, the sale

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[42]For an example of the "Certificate of Necessity," which Shoppers World, Inc. required its customers to sign, see Appendix X, p. 257.

[43]State v. Shoppers World, Inc., p. 109.

[44]Ibid., p. 116.

was not made to the customer. Certain precautionary steps were taken, however, where the customer indicated hesitancy or doubt about signing the "certificate of necessity." If, for example, the customer was hesitant about signing, the store manager would explain to the customer that the store was prohibited by law from selling particular items on the consecutive days of Saturday and Sunday unless the purchaser certified in writing that the item was needed as an emergency for the welfare, health, or safety of human or animal life and the purchase was an emergency purchase to protect the health, welfare, or safety of human or animal life.

The store manager would then question the customer about the existence and nature of the emergency. If, after the explanation and inquiry, the customer remained uncertain about signing the certificate, the item would not be sold but returned to the store shelves. Of the more than 200 Sunday purchasers, approximately fifteen of the total number indicated hesitancy or doubt about signing the certificate.[45]

The Corpus Christi District Attorney, Sam Jones, however, claimed the certificate was merely a device to get around the law and do business as usual seven days a week. Jones therefore brought suit to prevent the store from selling items not authorized for sale on Sunday. He charged that the store threatened to offer the items for sale on Sunday

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[45] Ibid., pp. 109, 116.

the previous December and subsequently had threatened to force employees to sell the prohibited items. The district attorney said the threatened action violated the law and constituted a nuisance.[46]

Despite Shoppers World, Inc.'s claim that it was complying with the provisions of Article 286(a), Judge J. D. Todd, of the 105th District Court of Nueces County, granted an injunction against the store restraining it from selling certain merchandise on the two consecutive days of Saturday and Sunday. The court ruled that not only must the purchaser certify in writing that a purchase was needed as an emergency but also that the purchase had to be

> in fact, an emergency purchase to protect the health, welfare or safety of human or animal life believed by Defendant Shoppers World, Inc., after inquiry, on reasonable grounds, in the exercise of good faith, to be such emergency purchase.[47]

The position of the state was that the provision required two conditions to exist before the sale of an item listed in Section 1 would be exempted from the general prohibition of Article 286(a). First, the purchaser must certify in writing that the item was needed as an emergency for the welfare, health, or safety of human or animal life. Second, the purchase must in fact be an emergency purchase to protect the

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[46] "Appeals Court Rejects Sunday Sales Decision," Corpus Christi Caller, Oct. 31, 1963, sec. 1, p. 1.

[47] Shoppers World, Inc. v. State, 373 S. W. 2d. 375 (1963).

health, welfare, or safety of human or animal life.[48] The court's ruling thus, in effect, held that the statute placed a duty of inquiry upon the seller, in addition to the use of the certificate, and that unless the seller believed, "after inquiry, on reasonable grounds, in exercise of good faith" that the purchase was an emergency purchase, the sale would be prohibited by the statute.[49]

When Shoppers World appealed Judge J. D. Todd's ruling to the Court of Civil Appeals in San Antonio, however, the lower court's ruling was reversed, and the injunction was dissolved. The appeals court, while noting that no employee of Shoppers World who worked on Saturday worked on the following Sunday, held that the lower court had undertaken to add words to Section 4(a) of Article 286(a)" which had not been put there by the legislature. "This the court may not do. The statute must be construed as it was written by the Legislature; it cannot be added to by the courts," ruled the Court of Civil Appeals. The court further pointed out that it is an established rule of law that the courts are not permitted to legislate in criminal matters. Accordingly, the courts cannot "add to statutory exemptions more onerous

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[48] State v. Shoppers World, Inc., p. 110.

[49] "Texas Sunday Closing Law--Certificates of Emergency--Duty of Seller to Inquire," Southwestern Law Journal, XVIII (September 1964), 528.

conditions which the Legislature did not see fit to impose."[50]

The Texas Supreme Court upheld the ruling of the Court of Civil Appeals, holding that the certificate used by Shoppers world complied with the statute[51] and that no duty was placed upon the store to determine whether the certificate was executed in good faith. The court pointed out that if Section 4(a) were interpreted as the state interpreted it the seller would be obligated, with respect to every sale, to make an objective determination as to whether the items were needed to protect the health, welfare, or safety of human or animal life.

The court questioned whether a seller could determine if a purchase was indeed an emergency purchase for the "welfare" of human or animal life. Since the word "welfare" has a variety of meanings, the court ruled that "whether any purchase is an emergency purchase...can be determined only subjectively by the purchaser." Although stating that

> It is difficult to conceive of any set of circumstances under which a purchase of most of the articles listed in Section 1 of Art. 286a could be of 'emergency purchase' as one would normally interpret that phrase...,

Chief Justice Robert W. Calvert's opinion said that the certificate was in strict compliance with the law.[52]

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[50] Shoppers World, Inc. v. State, p. 377.

[51] The certificate signed by the purchaser was not required to be signed under oath.

[52] State v. Shoppers World, Inc., pp. 111-12.

In making its ruling, the State Supreme Court applied the universally accepted rule of constitutional law that a statute, if susceptible of two interpretations, will be given the one which is constitutionally acceptable. The court stated that if Section 4(a) were given the interpretation adopted by the district court and by the state, it would be unconstitutional because of its failure to provide sufficient guides or criteria for the seller to follow when making the "good faith" test of the purchaser's motives. Therefore, the court strictly construed the language of the section so as to place upon the seller only the ministerial duty of obtaining the proper certificate.[53]

In a separate but concurring opinion, Justice Smith maintained that nothing but chaos and confusion could exist as long as Article 286(a) was a part of the statutory law. The justice stated that it was his opinion that "Article 286(a), supra, is a irredeemable violation of the Constitutions of the United States and the State of Texas." In supporting his position the justice pointed out that

> The entire Act, let alone Section 4a, is so indefinitely framed and of such doubtful construction that its test of enforcement are...subjective rather than objective, thereby violating the fundamental guarantees of due process of law granted in the Texas and United States Constitution.[54]

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[53] "Texas Sunday Closing Law," p. 528.

[54] State v. Shoppers World, Inc., p. 115.

And, while Section 4(a) used the term "emergency", it provided no standard by which the existence or an emergency could be gauged.

According to the justice, the statute was "so vague and indefinite that men of common intelligence must guess as to its meaning and differ as to its application." For example, "People must necessarily guess as to whether they are covered by the Act." In addition,

> They are unconscionably forced to speculate as to whether the 'emergency certificate' is enough of an 'emergency' to comply with the provisions of Section 4a.

Justice Smith further pointed out that an 'emergency' to one individual might not be to another; and what is 'health,' 'safe,' or the 'welfare' of one might not be for another. Therefore, in the justice's words, "Such a capricious, equivocal and arbitrary statute must not be allowed to stand."[55]

Shortly after the supreme court made its ruling, an article in the Southwestern Law Journal[56] stated that the Texas Sunday closing law, even as interpreted by the high court, and though constitutional, contained such vague language that its terms were, for the most part, unenforceable. The journal pointed out that, while the statute required the seller to obtain a certificate from each buyer of the

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[55] Ibid., pp. 116-17.

[56] A publication of Southern Methodist University Law School.

prohibited items, it set forth no clear standard by which either the buyers or the courts were to judge whether a purchase was an "emergency" purchase. The buyer was required only to state that the purchase was for his own "welfare," "health," and "safety." Such standard, the journal said, obviously emasculated the original intent of the Sunday laws.

> Therefore, Penal Code Article 286a, unless re-examined and clarified by the legislature, will remain in the statute books only as a burden to the conscience of the week-end shopper.[57]

The immediate effect of the supreme court's ruling was that stores across the state began selling items, which were otherwise prohibited for sale on Sunday, provided that the purchaser signed a certificate stating the purchase was an emergency. This, in turn, led several cities to pass ordinances designed to prevent a purchaser from falsely signing an emergency certificate. Before the statute which permitted emergency purchases was finally repealed by the state legislature, Houston, San Antonio, Austin, and other Texas cities had either passed or were in the process of passing such ordinances. For the most part, supporters of the ordinances were both organized business and religious groups, and the laws were designed to make the purchaser, rather than the merchant, responsible for proving that an emergency existed.

Two years after the supreme court made its ruling, an

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57 "Texas Sunday Closing Law," pp. 528-29.

organization of downtown San Antonio businessmen, the Downtown Association, requested the city council to pass an ordinance which would make it a violation to sign falsely an emergency purchase certificate. In making their request, the downtown delegation contended that a continuation of Sunday sales by discount stores could force downtown stores into staying open on Sundays. The delegation pointed out that the courts had held that stores were not responsible for determining whether an emergency actually existed, and they claimed the certificates had become a farce.

At a two-hour public hearing which was attended by approximately 120 persons, only 8 of the 22 speakers favored the proposed ordinance. But, the executive vice president of Frank Brothers told the council that the association "could have had 5,000 people here backing the ordinance if we had wanted to."[58]

The council allowed proponents of the proposed ordinance to speak first, and a delegation from the Downtown Association led the debate. Arguing for the ordinance the vice president of Joske's of Texas, James Shand, said, "We can stand the strain of having to stay open, if we have to, but we want our employees to have this common day of rest." Shand assured the council, however, that "Our store is not

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[58]"Referendum Sought On Sunday Closing," San Antonio Express, Sept. 16, 1966, sec. C, p. 4.

going to be put out of business by people staying open on Sunday."[59]

Similarily, L. H. Flood, the metropolitan manager of Montgomery Ward stores, termed the United States a "Godly country" and accused the stores which stay open on Sunday of "encouraging citizens to commit perjury by falsifying emergency purchase certificates." But, Flood conceeded that Montgomery Ward would stay open on Sunday if necessary in order to remain a competitive business. J. W. Erier, the group manager for Sears in San Antonio, on the otherhand, said that the Sunday closing situation was not an economic matter for Sears Roebuck & Co. According to the manager, the stores were staying open seventy-two hours a week and in his words "another eight hours wouldn't hurt us." Erier noted there were 47,000 retail employees in San Antonio and "We believe these employees should have a day to themselves. This ordinance is simply a regulatory measure to insure employees of their freedom."[60]

In addition to the Downtown Association, one woman with a petition signed by 116 persons spoke in favor of the ordinance, saying,

We, as Christians and citizens of the United States,

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[59] Ibid.

[60] Ibid.

> wish the city council of San Antonio to know that we support the proposed action to strengthen the Sunday-closing law, recognizing that, as a nation, under God we have an obligation to observe the Lord's Day.[61]

Also giving the religious touch to the proposed ordinance, another woman, with a Bible in her right hand, told the council that she was speaking "in behalf of God," and she felt "we should let God lead us."[62] George Stewart, the superintendent of missions for the San Antonio Baptist Association, meanwhile, told the council that the ninety-five member executive board of the association had passed a resolution supporting the ordinance.

An opponent of the proposed ordinance, Jay S. Fichtner who represented the Texas Association of Retail Department Stores,[63] however, charged that the law was "an attempt to set up a police state." Fichtner argued that in order to enforce the law which had been proposed by the Downtown Association, "a policeman (will have) to stand at every counter at every store and subjectively interpret what is an emergency item and what is not."[64]

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[61] Viola M. Payne, "Do Sunday Laws Fit into The Legacy of the Lone Star State?" Liberty, March-April, 1967, pp. 24-28.

[62] San Antonio Express, Sept. 16, 1966, sec. C, p. 4.

[63] The association represented by Fichtner was in the process of appealing to the supreme court a Houston ordinance which made it a violation to falsely sign an emergency certificate.

[64] San Antonio Express, Sept. 16, 1966, sec. C, p. 4.

He also noted the state law did not state that stores must close on Sunday but that it merely restricted them to selling restricted items on either Saturday or Sunday, but not on both days. Fichtner emphasized that "The legislature did not say Sunday is the day of rest as your local merchants have implied this morning." And, he urged the council to call for a referendum on the ordinance "whereby the people can express themselves on what they want and what they do not want."[65] In supporting his argument Fichtner presented the council with petitions which he said were signed by 3,900 persons who opposed the ordinance. Fichtner said that the petitions were obtained over a period of four days as various discount stores in the city.

Another opponent of the proposed ordinance, Richard Kopsky, a candidate for the state legislature, asked the council "Where will our policemen be while murder, rape, or robbery is going on?" He retorted, "They will be at shopping centers having to arrest people for buying sweaters or similar items."[66] Kopsky stated that if he were elected, he would not support such a law if it came before the legislature.

Three pastors of local Seventh-day Adventist churches

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[65] Ibid.

[66] Ibid.

also opposed the ordinance pointing out that it is the individual's right to choose which day he wishes to observe as a day of rest. One pastor argued that "We would be denying democracy to deny this privilege." Melvin Adams, the associate editor of Liberty magazine, a Seventh-day Adventist publication with offices in Washington, D. C., told the council that he felt they were "skating on thin ice." He emphasized that the U. S. Supreme Court had ruled that Sunday closing laws were constitutional only because they were not based on religious grounds. But, he said, "I have heard people speak today, implying the law you are considering is based on a religious measure."[67]

Adams further maintained that the law would discriminate against the individual, cause discriminatory enforcement, clog the courts with needless cases, and otherwise cause confusion about what is right and what is wrong. He argued that the downtown merchants had put forth an ivory tower of family togetherness on Sunday, adding, "This is very hard to shoot against, but we must realize they are interested in the cold competitive issue of the almighty dollar."[68]

Although opponents[69] of the proposed ordinance called

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[67] Ibid.

[68] Ibid.

[69] Three other opponents, who identified themselves as

for a referendum on the law, the council took no action on either the ordinance or the referendum proposal following the hearing. Mayor W. W. McAllister said, however, that the council would take the discussion under consideration.

Two years after the supreme court made its ruling, the Austin City Council passed an ordinance by a four to one vote making the purchaser, instead of the merchant, responsible for proving that his purchase was made because of an emergency. The ordinance, which was passed on November 22, 1966, was adopted as the result of an earlier meeting with various downtown and shopping center merchants who supported the measure. On November 17, supporters of the ordinance went through a thorough presentation of their support of the measure and included representatives of Sears Roebuck, and J. C. Penny Co., and Hank Dunlop, a representative of the Better Business Bureau.[70]

One of the proponents of the ordinance, Jim Kuhn, the manager of Sears, accused some firms of encouraging Sunday purchases through newspaper advertisements. Another supporter, Merle S. Brower, who was the manager of J. C. Penny's complained that Sunday openings were "creating hardships not

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interested citizens, included I. C. Eells who said he was speaking for customers who needed the services offered to them on Sunday.

[70]"Sunday Closing Law Adopted by Council," Austin American, Nov. 23, 1966, sec. A, pp. 1, 6.

only on management but [also] on personel." Meanwhile, City Attorney Doren Eskew told the council that a similar ordinance in Houston had the effect of "simply...closing all business houses on Sunday."[71]

Although the council did not set a formal public hearing on the proposed ordinance, Pastor L. E. Rogers of the Seventh-day Adventist Church in Austin opposed the measure on the grounds that it carried "a coloring of religious law.[72] When the proposed ordinance was presented to the council the following week, Rogers once again opposed the measure and urged the council not to act without a public hearing. Mayor Lester Palmer replied to Roger's request saying "That's what this is today." The mayor also defended the proposed ordinance against Roger's accusations by telling the pastor that the council could consider the law only because it involved the general health and welfare of the public, thereby likening it to laws governing the forty-hour work week.

Despite Roger's opposition to the proposed ordinance, however, the council adopted the measure after a forty-five minute discussion the following week. The new ordinance which was aimed at the buyer, made it an offense to claim falsely that an emergency required the purchase of any item

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[71] Ibid.

[72] Ibid.

that the state blue laws stipulated could be sold only on an emergency basis. Specifically, the ordinance stated that an "emergency" meant

> a situation in which human or animal life, health, safety or welfare is actually in jeopardy, and to prevent further endangering thereof, requires the immediate purchase

of those items named in the state blue laws.

In addition, an "emergency purchase" was defined as "the need for which arises out of a situation in which human or animal life, health, safety or welfare is actually in danger and which must be made to prevent further danger." And, "welfare" was defined as "a condition of well-being and enjoyment in which there is freedom from danger or calamity."[73]

The council majority suspended rules to put the ordinance into effect immediately. Under the terms of the ordinance, the purchase of the contraband items on Sunday would constitute "prima facie evidence that an actual emergency as defined herein did not exist."[74] The City Attorney, Doren Eskew, said that section of the law meant that it "couldn't be conceived by mankind" that an emergency would necessitate the purchase of the contraband items on Sunday.

According to Eskew, law enforcement officers could file

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[73] Ibid., p. 1.

[74] Ibid.

complaints against suspected offenders if they merely had proof that a purchase was made. Thus, the burden of proof that an emergency existed would be on the buyer, and, unlike the state laws, store operators could not be prosecuted under the city law. Signing a false certificate would constitute a violation of the ordinance which carried the usual misdemeanor fine of a $200 maximum.

The only council member who voted against the ordinance was Mrs. Emma Long. She called the law, which was copied from the Houston ordinance, "an outrage" supported by the "selfish motives of certain merchants." Mrs. Long, who was absent the week before when the merchants first asked the council to pass the measure, said that the ordinance was "taking away from the general public the right and privilege to do what they please." She said she was to the opinion that "The emergency clause is a fraud and the ordinance is unnecessary." And, the councilwoman asked the merchants "Where is the good old free enterprise system that made you all your money?"[75]

The council also debated the question of whether the city ordinance could be properly enforced by law enforcement officials. Police Chief Bob Miles, who had earlier stated that the law would "put an undue burden" on the police,

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[75] Ibid., pp. 1, 6.

expressed concern over how his department could handle the enforcement aspects of the ordinance. Responding to a question by Mayor Pro Tem Louis Shanks as to how the chief of police in Houston enforced a similar blue law ordinance, Miles replied "I don't have the slightest idea." To this Shanks quiped

> Then I suggest we find out. I don't think if we sit up here as public officials, and if the City Council wants to pass a law, we ought to try to drop the law by just taking an arbitrary action on it.[76]

Later, Miles emphasized that if there were widespread violation of the law, it would necessitate the assignment of extra men on an overtime basis. Miles said that enforcement of the ordinance, however, would rest with his plain clothes detectives.

Meanwhile, Doren Eskew, who told the council that he believed all blue laws should be repealed, said he thought the ordinance was "sustainable." Councilman Travis LaRue, on the otherhand, said that he was "disturbed" by the trend toward staying open more days and longer hours. He maintained the trend would lead to demands for more city services such as additional police protection. And, Louis Shanks pointed out that in spite of forty-hour work weeks, many employees were "being abused" because stores were remaining open longer hours and operating more days.[77]

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[76] Ibid., p. 1.

[77] Ibid., pp. 1, 6.

Thus, the Austin ordinance was aimed at the buyer and made it a misdemeanor to sign falsely an "emergency certificate" in order to purchase certain specific items which the state blue law provided that a seller could sell on only one or the other of the two consecutive days of Saturday and Sunday. Even though the police did not attempt to enforce the ordinance on November 27, the first Sunday after its passage, two officers made random checks at discount houses and questioned fifteen persons. The following Sunday, however, Police Chief Bob Miles assigned thirty officers to enforce the law and a total of ninety-two citations were issued during the afternoon.[78] But, Miles predicted that it would take "at least 150 officers" to obtain complete enforcement.

In the meantime, Councilman Ken White along with Mrs. Emma Long, who was the only council member to vote against passage of the law, made an unsuccessful attempt to have the ordinance repealed. Although they were unsuccessful in their attempt, on December 7 the council voted to repeal the law which had been enacted only fifteen days earlier.[79] The council's action came as the result of a special session called at the request of discount store managers who asked that enforcement of the law be suspended until after Christmas.

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[78] "Split Council Kills Sunday Sales Law," Austin American, Dec. 8, 1966, sec. A, p. 6

[79] Ibid., p. 1.

On hand for the session were several discount store managers, their attorneys, representatives of the Seventh-day Adventist Church, and several downtown and suburban shopping center merchants who initially requested passage of the ordinance. Dick Baker, the attorney representing Spartan's discount store, told the council that the enactment of the ordinance "was rather harmful, to say the least," because the discount stores has on hand a large quanity of Christmas merchandise which had been ordered in July. Another attorney, Trueman O'Quinn, who was representing Shopper's World, said "obviously we have been hurt a great deal" as a result of the large Christmas inventory. O'Quinn pointed out that the inventories, if not sold, would become taxable by the city and county after January 1, 196?.[80]

The discount store spokesmen agreed to close voluntarily "a couple or three Sundays" in January while the validity of the ordinance was tried in court. After more than two hours of debate, however, Mayor Pro Tem Louis Shanks made a motion to suspend enforcement until January 2, but the measure died for lack of a second. Meanwhile, Mrs. Long said that she would not vote for a proposal which would suspend enforcement until after Christmas, because in her words, "if its a bad law then it's a bad law now and we ought to

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[80] *Ibid.*, p. 6.

just get rid of it here and now."[81] Instead of supporting the motion for suspension, she made a motion, which was seconded by Councilman Ken White to repeal the Sunday purchase ordinance altogether. City Attorney Doren Eskew said that the vote was only intended "to instruct that an ordinance be brought in." Mrs. Long agreed and a five minute recess was called while a formal ordinance was prepared for first reading.

When the ordinance was finally presented, Councilmen Travis LaRue and Ken White joined Mrs. Emma Long to form a council majority to repeal the Sunday purchase ordinance. Since four affirmative votes were needed to pass an ordinance through final reading on a single calendar day, the council had to vote on a second reading of the repeal ordinance at a regular session the following Thursday and on the final reading at a special session on Friday.[82]

Travis LaRue, who originally supported the ordinance, told the council that he would not vote again to "send the police back to the battle lines."[83] But, both Mayor Lester Palmer and Mayor Pro Tem Louis Shanks, owner of a large downtown store, voted against repeal. Mayor Palmer, who defended

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[81] Ibid., p. 1.

[82] Ibid.

[83] Ibid.

the law to the end, said the council had received 788 letters at the city hall in favor of the ordinance and only 97 against it. He called the ordinance a "very, very good law" and charged that unless one day is set aside for rest from the "rust and corrosion of the week's work," the life, welfare, and morals of the community would change.[84]

In the meantime, a trio of Seventh-day Adventist Church officials attacked the law as having "religious coloring." Robert E. Gibson, an Adventist minister, waved before the council the summons he had received from the police after buying a pair of shoes at the Gulf Mart. According to the minister, he had been visiting on Sunday and got his feet wet. He said he bought the shoes because his other shoes were wet and it would have been several hours before he could have gone home to change his shoes. Since he did not wish to take a cold, the minister told the council that he stopped in the discount store and purchased a pair of dry shoes after signing a certificate of emergency.[85]

Gibson said,

> The police officer told me that if I didn't sign [the summons] I would have to go to jail. He told me that we have one of the best jails in the State of Texas, ...air-conditioned. I don't care to sleep in an air-conditioned jail.[86]

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[84] Ibid., p. 6

[85] "The Austin City Council asked for Proof of Emergency: They got it," Liberty, March-April, 1967, p. 26.

[86] Ibid.

The minister further told the council "I stand here a liar, adjudicated a liar, a criminal. I have been humiliated before this city as a criminal."[87] Mayor Pro Tem Louis Shanks, however, assured Gibson that "If the judge is feeling all right that day, you'll get off." "That's just the problem," Gibson retorted. "What if he isn't feeling all right?"[88]

Also, Shanks told Gibson that he was not a criminal and that his case was the same as that of a man given a ticket on any other day for overparking. "But it's not the same," Gibson replied.

> I can buy shoes Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, and I won't get arrested. Only on Sunday! If I overpark on any day I will get a ticket. This summons makes me a criminal for doing on one day what is right on all other days.[89]

Gibson said his son, who had left for Vietnam earlier asked him "Is that court summons in your pocket what I am going to fight for?"

Melvin Adams, who was associate editor of the Adventist magazine Liberty, charged that proponents of the ordinance did not want church representatives to endorse the law "because it would be immediately declared unconstitutional" as a religious law.[90] The editor further predicted that if

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87"Council Kills Sunday Sales Law," p. 6.

88"Proof of Emergency," p. 26.

89Ibid.

90"Council Kills Sunday Sales Law," p. 6.

the law stood, the courts would be clogged and overloaded. Mrs. Long, meanwhile, said that she had advised everybody given tickets to demand a jury trial in Corporation Court. But, Doren Eskew said after the session that the ninety-two alleged violations written by police the previous Sunday would be dropped immediately. The attorney, who had contended all along that the law "simply prohibits lying," said that he would have defended the ordinance in court, but that he personally believed all state blue laws should be repealed.

Eskew pointed out that forty-nine states had some sort of Sunday closing law, and while

> The laws may not be the personal preference of a lot of us...they are legal and the chances of them being overruled by the courts is remote. There is doubt our blue laws leave a great deal to be desired, the attorney said. They need to be simplified and clarified if they are to be our laws, but that is a job for legislature not the courts.[91]

Nevertheless, Eskew said that both cities and state have the police power to require one day surcease from labor.

While the Austin City Council was in the process of repealing its newly enacted law, a group of businessmen and ministers were meeting at Lubbock with the announced intention of asking the city council to implement some kind of Sunday closing law. As result of the meeting most of Lubbock's businessmen agreed to start closing their businesses

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[91] "Sunday Blue Laws May Face Solon," Lubbock Avalanche Journal, Dec. 14, 1966, sec. A, p. 12.

on Sunday, beginning on January 8, 1967, in accordance with a voluntary blue law which had been urged by the local merchants.[92]

Bill Campbell, chairman of the merchants who had been working on a proposal to obtain the volunteer closing, said that all of the city's discount houses had agreed to close their stores on Sundays. Campbell also pointed out that a movement was underway for only one-fourth of the city's service stations to be open on Sundays. Although Campbell said that drug stores would be included in those firms closing their stores, he said that his group had not contacted the smaller neighborhood grocery stores. He said, however, that all of the larger supermarkets had agreed to close in compliance with the law.

Campbell further stated that plans called for the state statute to be enforced and that any business which was not operating under the law would be prosecuted. Meanwhile, County Attorney Fred West pledged to prosecute all violators of the law. West told a group meeting at the Villa Inn that the law was a "workable and enforceable statute, except for the glaring loophole of emergency certificates."[93] And, he invited anyone interested in the law to visit his office

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[92]"Sunday Closing Okay By 'Most' Stores Seen," Lubbock Avalanche Journal, Dec. 21, 1966, sec. A, p. 8.

[93]Ibid.

to obtain copies of the statute, along with a special form he had prepared as a guideline in obtaining evidence for a case.

Three months later, the Texas Senate passed on voice vote a recently passed House bill which removed the emergency provision from the Sunday closing law. The Senate's passage, however, was made over the strong objection of Senators Jim Bates, Jack Strong, Ralph Hall, and A. R. Schwartz. Senator Schwartz of Galveston began a weekly filibuster against the bill on March 15 and ended it two weeks later stating

> I'm stopping this filibuster for one reason and one reason only--I want the lieutenant governor [Preston Smith] to get full credit for passage of this bill.[94]

Prior to ending his final filibuster, which lasted for some eight hours, Schwartz charged that

> The chair should get full credit for denying 11,000 Seventh-day Adventist and 200,000--300,000 Texans to be heard, for being able not to abide by their religions and the God-given right to buy on Sunday, go to church on Sunday or to hell on Sunday if they want to.[95]

The senator maintained that "This bill will make a criminal of a little woman who just wants a garter to hold up her socks." And, Schwartz read names from petitions which he claimed supported his stand against a House bill passed to

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[94]"Furious Schwartz Stops Filibuster," Austin American, Mar. 30, 1967, sec. A, p. 1.

[95]Ibid.

remove the emergency provision from the state blue law.

Senator Bates of Edinburg summed up his views by saying "It's a religious law to dictate what days we will buy and what days we will go to church."[96] Nevertheless, Schwartz's amendment to delete the enacting clause from the bill failed by a vote of six to twenty-three, and the bill repealing the emergency certificate was sent to Governor John Connally to be signed into law.

Less than three years after the state legislature repealed the controversial "emergency certificate" provision of the Sunday law, the Texas Supreme Court, in a six to three decision, reversed a lower court's ruling and held the state's blue law preventing stores from selling certain merchandise on consecutive Saturdays and Sundays was constitutional. The high court's ruling came as the result of a suit filed by the district attorney of Bexar County to keep four San Antonio discount houses from selling certain prohibited articles on both days of the weekend.

The four stores, Spartan's, Barker's, Shoppers World, and Globe, stayed open on consecutive Saturdays and Sundays, in an open test of the law, and Bexar County District Attorney James Barlow sought an injunction to halt sales on both days.[97] The four discount houses, however, contended that

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[96] Ibid.

[97] "Court Upholds Sunday Law," Amarillo Globe Times, Nov. 5, 1969, p. 1.

the law was an unjustified exercise of the state's police power and that it took their property without compensation or due process of law. When a San Antonio trial court held the Sunday closing law was unconstitutional, Barlow and the state attorneys appealed directly to the Texas Supreme Court.

On appeal, the supreme court reversed the lower court's ruling and held that the state's blue law was not unconstitutional. In a majority opinion written by Associate Justice Tom Reavley, the court ruled that

> the legislature may not validly declare something to be a nuisance which is not so in fact, but that depends upon the question of whether that which is declared to be a nuisance endangers the public health, public safety, public welare or offends the public morals...[98]

The judge, in a fifteen page opinion, ruled that it was not the function of the courts to judge the wisdom of a legislative enactment.

> It is only when a statute arbitrarily interferes with legitimate activities in such a manner as to have no reasonable relation to the general welfare that this court may rule the statute to be unconstitutional on the grounds with which we are here concerned.[99]

Based upon this interpretation and considering the long precedent for the constitutionality of Sunday closing laws in Texas, the court ruled that "we hold it to be validly related to the health, recreation, and welfare of the people."[100]

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[98] Ibid., pp. 1, 12.

[99] Ibid., p. 12.

[100] Ibid.

In addition, the court, while noting that the Saturday or Sunday closing law actually gave a store the option of opening on Sunday, ruled that a merchant could not close off part of his store on Saturday, then open it on Sunday while shutting down the rest of the establishment.

> Thus, could a merchant close off his appliance department on Saturday and then operate on Sunday with nothing but his appliance department open? We construe the statute to prohibit this,

the justice said. Reavley pointed out that the effect of applying the prohibtion only to consecutive day sales of each separate article

> would be to have legislature permit a merchant to sell watches on Saturday and clocks on Sunday, blinds and draperies on Saturday and curtains on Sunday, washing machines and radios on Saturday and driers and television sets on Sunday.

According to the justice, "this would be nonsensical plan to ascribe to the legislature."[101]

Chief Justice Robert W. Calvert wrote a dissenting opinion, however, saying the law was an arbitrary exercise of the police power and should be declared unconstitutional. The justice also contended that stores could be required to close on Sunday only by laws which specifically require Sunday closing. According to Calvert,

> If the legislature had intended to make a person selling one of the items on Saturday subject to penalties if he sold another on Sunday, it could have so provided

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[101] Ibid.

in very simple language.[102]

The justice summed up his feelings by saying

> What possible relationship the sale or non sale of Saturday and Sunday can have to the public health, morals, recreation or welfare is not suggested by the state; and I have been unable to conjur up a reasonable relationship in my own mind.[103]

And, the justice stated that

> The utter incongruity of an effort to relate the provisions of Article 286A...to protection of public health recreation or welfare is so patent as to be inescapable.[104]

Thus, the court's decision at least temporarily ended years of controversy over the law, which had been annually challenged at the Christmas shopping season. Furthermore, while most of the articles prohibited by the law comprised the bulk of discount store sales and were only sidelines in drugstores and supermarkets, the court's ruling was directed at discount stores and had very little effect on other retail merchants who operated on Sundays. Technically, however, drugstores, convenience stores, furniture stores, automobile agencies, and supermarkets could have been closed under the provisions of the law. But, the method of enforcing the statutes in the past appeared to make such a possibility unlikely.

The high court also upheld the Sunday closing law in

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[102] Ibid.

[103] "State's High Court Hits at Sunday Sales," Amarillo Daily News, Nov. 6, 1969, p. 12.

[104] "Affected Merchants Say They'll Comply," Amarillo Daily News, Nov. 6, 1969, pp. 1, 12.

two other related cases. In both of the cases, one from Amarillo and the other from Abilene, the district courts had held that the Sunday closing law was unconstitutional. But, the Amarillo and Eastland courts of civil appeals had reversed the lower court's ruling and held the blue law was unconstitutional. On appeeal, the state supreme court agreed with the appeals court and held that the law was not unconstitutional.

In addition, the court refused to grant a writ of error to Gibson's Discount Center of Amarillo in a suit brought by Walter Hill, an employee of Sears Roebuck and Company. Hill had sought a temporary injunction against both the Gibsons and K-Mart Discount Stores to prevent the two firms from selling prohibited merchandise on Sunday. According to Hill, "I basically wanted to know if there was such a law that would stand up because I believe if one (store) closes, all others should close and give their people a day off."[105] Judge Gene Jordan of the 47th District Court refused to grant the injunction, however, saying the law was vague and indefinite and impossible to understand. The case was later appealed by Hill to the Seventh Court of Civil Appeals where it was held that the injunction should have been granted. And, Gibson's application for a writ of error was filed with the supreme court after the appellate court in Amarillo refused

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[105] Ibid.

a rehearing on its ruling.

Following the Texas Supreme Court's ruling, most of the Amarillo merchants who had previously sold general merchandise seven days a week agreed to comply with the high court's ruling that their stores could operate on Saturday or on Sunday, but not on both days. A spokesman for Gibson's, however, said that the store would await the advise from their attorneys and management before making a decision on what action to take.

Prior to the court's ruling, several Amarillo merchants had stated that their Sunday store hours were being maintained to meet competition. J. L. Drury, manager of Woolco Department Store, for example, said that he had been waiting for years for a decision on the closing law.

> If it (the law) has been upheld by the supreme court, then we will have to close, but it is up to the local authorities to enforce the law and enforce it for one and all.

Paul Williamson, the manager of Sears, said he was elated over the court's decision. Williamson, speaking of the ruling, said "It bears out what most of us knew all the time--that this was a valid law and that it should be upheld as such."[106] The manager of Levines, Coy Quine, said that their store did not want to stay open on Sunday in the first place and if their competitors had closed, they would have also.

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[106] Ibid., p. 12.

Representatives of several other firms, including Carl Adkins, district manager of the TG & Y stores, John Hartman of Dallas, a vice president of Skaggs Drug Centers, said their stores would abide by the court's decision.[107]

On the religious side of the issue, Dr. Newton J. Robison, pastor of the First Christian Church, said that he was "greatly concerned about it and hopeful that it will improve the situation for the people that work in the stores and the merchants themselves as well as the general public." Newton further said "I never have believed in this blue law idea... but I think from a humanitarian standpoint there's much to be said for a day of rest."[108]

Father Michael Heneghan, Superintendent of the Catholic Schools in Amarillo, on the other hand, maintained that there was "obviously very little religious content in this at all ...the court is making a judgment of economic necessity, I don't think there's urgent significance in it."[109] Gene Shelburne, minister of the Anna Street Church of Christ, however, expressed a different view of the court's ruling, saying that he thought the decision should be left to the store manager and to the individual. He pointed out that the "Jewish

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[107] Ibid.

[108] Ibid.

[109] Ibid.

religion observes one day of rest, the Seventh Day Adventist another and the Christian still another."

Nevertheless, enforcing the statutes remained the major problem. Although the burden of enforcing the law laid primarily with the city and county attorneys, public opinion was to be the guiding force. Neither the city nor the county attorney was empowered to initiate legal action without a complaint from a private citizen.[110] While each case would have to stand on its own facts, the attorneys could deem it not to be in the public interest to try to make a case even after a complaint had been filed. The Potter County Attorney, Mrs. Naomi Harney, pointed out that most complaints in the past had been filed by a private citizen on behalf of a business establishment.[111] The district attorney, Tom Curtis, meanwhile said that his office would carry out any "responsibilities which may be placed on us" by the court's decision.

Likewise, the district attorney at Dallas, Henry Wade, said that police agencies and his office would close down any firm operating in violation of the blue law. Wade, who said that five firms had contacted him and informed his office

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[110] Two discount stores, a millinery shop, and a shoe store were among the six Amarillo stores which had been targets of complaints filed by private citizens.

[111] "Public Must Back Sunday Sales Ban," Amarillo Daily News, Nov. 7, 1969, p. 12.

they would no longer be open on both Saturdays and Sundays, stated that he did not "anticipate that anybody is going to try to violate" the law. But, he warned that "We will enforce it here to the best of our ability" and that he would "close them down if they are in violation of the law."[112]

Wade's stern warning also came with the announcement that he was planning to ask a district judge to order the forfeiture of a $100,000 bond which had allowed the Levitz Furniture Co. to operate on both Saturdays and Sundays for nearly a year.[113] Levitz had been placed under a restraining order after District Judge Clarence Guittard ruled the law was valid. The firm posted the $100,000 appeal bond, which allowed it to continue making weekend sales, betting, in effect, that the law would be found unconstitutional. Attorneys said that all or part of the bond could be forfeited as a result of the court's ruling.

The District Attorney of Tarrant County, Frank Coffey, however, said that he would have no comment on enforcement of the law until he had studied the court's decision. But, several Tarrant county attorneys correctly predicted that Coffey would not attempt to enforce the law strictly during the upcoming Christmas holiday shopping period. Similarly

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[112] "D. A. Pledges To Enforce 'Blue Law'," Dallas Morning News, Nov. 6, 1969, sec. A, p. 1.

[113] Ibid.

the court's ruling had only limited effect on the operation of most Austin department stores and discount houses during the Christmas season. Unlike most stores in other cities of the state, however, the majority of Austin's stores said that they had made no plans for their businesses to be open on Sunday before the supreme court made its ruling.[114]

While the majority of Austin's department stores and discount houses had announced that they would abide by the court's ruling, the Academy Super Surplus Sales Co., whose policy it had been for over a year to close on Saturday instead of Sunday, said that its store would continue to be open for business on Sundays.[115] The owner of the store, Max Gochman, however, said that in the advertising the hours of business for his store the wording would be changed from "open on Sunday due to local law," to "open on Sunday due to law."[116] Nevertheless, most of Austin's store managers indicated they favored remaining closed on Sundays and that they would consider opening seven days a week only if competition forced them into it.

Less than two weeks after the Texas Supreme Court had

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[114]"State Court Upholds Sunday Closing Law," Austin American, Nov. 6, 1969, sec. A, p. 54.

[115]This practice was in conformity with the Texas Supreme Court ruling.

[116]Ibid.

made its ruling, however, the controversy was obviously far from being solved when two federal judges issued restraining orders preventing enforcement officers in San Antonio and Dallas from closing stores in those two cities.[117] The federal court ruling in Dallas applied to stores in Fort Worth but was filed in the neighboring city when the federal judge in Fort Worth was not available.

The judge's action came as several major discount stores were threatening to ignore the law which forbade certain items to be sold on both Saturdays and Sundays. Even before the court decisions, H. R. Gibson Jr., president of Gibson's Discount Center, which was a 100-store firm, said that some Gibson stores would be open on Saturday and some on Sunday but that none of them would be on both days.[118] While officials of the Medallion Discount Stores in Dallas refused to discuss their plans, officials of Leonard's, a major discount chain in Houston, said that their stores would begin opening on both days. Meanwhile, attorneys for various stores in Dallas and San Antonio said they planned to take their cases to the Texas Supreme Court again, and if they lost to channel their appeals through the federal courts.

When the Texas Sunday blue law was appealed to the U. S.

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[117] "Texas Blue Laws In Trouble Again," Austin American, Nov. 16, 1969, sec. A, p. 7.

[118] Ibid.

Supreme Court the following week, however, the high Court refused to consider its constitutionality. In addition, the Court, which unanimously dismissed the case "for want of a substantial federal question," sidestepped the question of whether a discount store could sell to another company on weekends and resume operations on weekdays.[119] Some stores had been staying open for six days a week, then selling the store late Saturday night to Sundaco, Inc., which operated it on Sundays. The store would then be purchased back from Sundaco on the following Monday. This practice allowed a store to operate as two independent businesses and thus sell otherwise prohibited merchandise in the same store on both consecutive Saturdays and Sundays.

Two months after the U. S. Supreme Court refused to rule on the constitutionality of the Texas blue law, the Court of Criminal Appeals refused to interfere with a Fort Worth judge's ban on new injunction cases against the Cook discount chain. The court ruled that it had no jurisdiction because the case was a civil matter, and the court could consider only criminal cases. District Judge Walter Jordan of Fort worth had earlier issued the order against the filing of new injunction cases against Cook United, Inc., which did business as Cook's Discount Department Stores and as Cook's Discount

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[119]"High Court Avoids Texas' Blue Law," Austin American, April 21, 1970, sec. A, p. 1.

Centers.[120]

Both the Fort Worth and Waco district attorneys had requested a writ of prohibition, a seldom used proceeding, against Judge Jordan's order. Cook's attorney, Harold Berman, however, said that Jordan intended only to keep the state and counties from filing "multiple suits, from continual harassment, from vexatious litigation."[121] Berman also pointed out that Jordan found that there were four pending injunction cases against Cook's in Waco, three in Fort Worth, two in Abilene, two in Bryan, one in Lubbock, and one in Odessa. But, he said the judge's order left authorities free to bring criminal prosecutions against offenders.

Shortly after the appeals court refused to interfere with Judge Jordan's ban on new injunction cases, the state supreme court upheld a Bryan district court's ruling that the practice of Cook's Discount Center in Bryan to sell the merchandise in its store to another corporation, Sundaco, Inc., which operated the store on Sunday, was "a sham and subterfuge" to get around the state law. The district court had placed the discount house under permanent injunction and when Cook's appealed the decision, the district court's ruling, along with a similar one by the court of civil appeals,

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[120]"Sunday Closing Argument Lost By Cook Chain," Amarillo Daily News, June 30, 1970, p. 6.

[121]Ibid.

was upheld by the supreme court.

The following year the supreme court also upheld a Fort Worth district court's order which forbade Cook United, Inc., and Sundaco, Inc. to engage in alleged violations of the state Sunday closing law. In a 7-2 decision, the court voided a court of civil appeals ruling that the trial court had acted illegally in granting the order. The two corporations appealed the district court's order on two grounds: that the court should not have granted the injunction because similar cases already were pending against the two firms; and that the court had failed to recite the reasons for the order. When appealed to the supreme court, however, both grounds were overruled. The court majority held that there was no need to set out reasons for the injunction since all that was a finding that the Sunday law was being violated.[122]

Six months later, Sundaco requested a rehearing, but the supreme court refused to reconsider its decision against the firm, rejecting the request without a written opinion. The court's action thus upheld a district court ruling forbidding Sundaco and the Clark's and Cook United discount stores from operating on both Saturdays and Sundays in the city of Abilene.[123]

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[122]"Supreme Court Upholds Sunday Closing Order," Lubbock Avalanche Journal, Jan. 13, 1971, sec. A, p. 10.

[123]"Court Refuses Rehearing Bid," Amarillo Daily News, July 15, 1971, p. 52.

Three months after the supreme court's ruling, Judge William Shaver began conducting hearings in the 140th District Court on motions by attorneys defending Clark-Gamble Inc., against a civil suit which had been brought two years earlier by Lubbock County Attorney Tom Purdom. The suit, which was a civil action, charged that Clark-Gamble, operating as Sundaco, Inc., had violated Article 286(a) of the Texas Penal Code which prohibited the selling of certain articles on consecutive Saturdays and Sundays. The defendants asked Shaver to throw out the case, however, claiming the issues being disrupted had been settled in their favor in an earlier case and that Purdom was denying them equal justice under the law by not prosecuting their competition.

These claims were denied Purdom who pointed out that on the Sunday in question, in October 1969, the defendants' store at 3907 Avenue Q was the only store open in Lubbock which was selling prohibited merchandise. At that time, Clark-Gamble was selling its complete operation at Sundaco, Inc. each Saturday night and buying it back the following Monday morning, so that the same company was not operating the store on consecutive Saturdays and Sundays.[124]

Attorneys for Cook United Inc.,[125] who claimed the local

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[124]"New Round on Sunday Closing Slated Here," Lubbock Avalanche Journal, Oct. 24, 1971, sec. A, p. 1.

[125]The name of the local store involved in the suit had

court had no jurisdiction over the company which was based outside the state, had earlier requested dismissal of the case arguing that (1) the issues involving the same commercial parties and questions of law had been previously settled in an Odessa case in May 1970; (2) the only two questions in the case that had not been settled in the Odessa case were charges in County Attorney Tom Purdom's amended petition which referred to Sundaco, Inc. as the "alter ego" of Clark-Gamble and charges that the agencies were related; and (3) the county attorney was subjecting Sundaco to unequal enforcement of the laws by filing the suit and prosecuting the defendants while allowing flagrant violations of the law by the defendant's competitors in Lubbock every Sunday.[126]

Judge Shaver had denied the motion, however, ruling that the facts and parties involved in the suit differed significantly from those involved in the Odessa case. Although Purdom agreed that no identical suits had been filed against other businesses in Lubbock, he defended his stand against Sundaco's claim, that it was being denied "equal protection of law" by having been singled out for prosection arguing in his petition that he was not enforcing the law unfairly since all other stores were in compliance with the Sunday closing

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changed from Clark's-Gamble to Cook United since the suit was originally filed.

[126]"Hearing Slated Here Monday on 'Blue Law'," Lubbock Avalanche Journal, Oct. 24, 1971, sec. A, p. 12.

law on the same date that Sundaco was accused of violating that law. Purdom further maintained that the same officials and stockholders were involved in all three companies and that the arrangements among the companies were as subterfuge to avoid compliance with the law.[127]

Lubbock merchants, meanwhile, were using public opinion to support their reason for being opened on Sunday. One discount store manager expressed the views of many other businessmen when he said "We're open in the public interest." He reasoned that "If the public didn't shop, the stores wouldn't open."[128] They argued that if the people did not want to buy automobile supplies and groceries and pay to attend such entertainments as movies and baseball games on Sunday, establishments offering those items for sale would not be open.

Another Lubbock merchant, H. W. Schultz, manager of Gibson's Discount store, said that Sunday purchases constituted eight to nine per cent of the store's total business. Since the store was open only five hours on Sunday, he pointed out that it was the best profit-per-hour day of the week. Similarly, J. D. Guthrie, manager of K-Mart, whose company did not allow him to release figures, emphasized

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[127] Ibid.

[128] Lubbock Avalanche Journal, Oct. 24, 1971, sec. A, p. 12.

that those who would like to close the stores on Sunday were biting one of the hands that was feeding Lubbock's economy. Guthrie noted that

> From the checks we take in on Sunday, there is just a tremendous number of out-of-town people who come in here Sunday to shop,[129] and that helps everyone, not just us--the service stations, the restaurants.[130]

But Guthrie, who pointed out that Lubbock and Waco were the only two cities in Texas with K-Mart stores open on Sunday, said that his company would rather close its stores on Sunday if other businesses were also closed.

Although most stores closed in the state's large metro areas following the supreme court's ruling the previous year, Purdom was receiving criticism from some local merchants who said that it was his responsibility to seek out violators of the law. Purdom's response to the criticism, however, was that "They want me to do their dirty work for them." He maintained that the merchants "gripe a lot, but not one is willing to bring me a complaint." The county attorney said he was not about to have an officer arrest "some store clerk who's just doing what he was told to do" when "you couldn't find a jury to convict them anyway."[131] Purdom contended

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[129]The 26-county area, which was considered Lubbock's retail trade territory, included more than 500 customers. Ibid.

[130]Ibid.

[131]Ibid.

that the public, not the store owners, was at fault; but he was nevertheless pressing his suit, not as a county attorney but as a private citizen, because he beleived stores should be closed on Sunday.

Meanwhile, the discount stores were beginning to mount a new, but perfectly legal, means for selling merchandise on Sunday. In larger Texas cities, for example, where a chain would operate more than one store, some of the stores were being open on Sunday and closed on Saturday, while others were being open on Saturday and closed on Sunday. This practice, in effect, was forcing companies with only one store to consider once again opening seven days a week. The manager of one Lubbock store, however, said that his company did not use the Saturday--Sunday alternation and termed it "another cheap trick to circumvent the law."[132] But, he said his company was considering reopening seven days a week in some places where competition was employing alternation.

While some merchants were searching for new, but legal ways, to open on both days of the weekend, trial was continuing in the 140th District Court against Clark's-Gamble, Inc., Cook's Discount Department Store, and Sundaco. Earlier, Judge William Shaver had granted a defense motion to remove Cook's United, Inc. from the case as a defendant holding that

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[132] Ibid.

Purdom had failed to show that the firm was actually doing business in the state.

Under questioning by the prosecution, the defendants, who included the store manager, Larry Combs, admitted to the jury that the operation was "a very strange, unusual arrangement" designed by the owners after passage of the law which forbade stores from selling certain merchandise on the two consecutive days of the weekend.[133] The defendants claimed, however, that the lease arrangements had made their operation in compliance with the law since the same company was not operating on both days. In addition, the defendants maintained a distinction between Sundaco and Cook's Discount Department Store. This fact was emphasized by a defense attorney for the firms who maintained that the Lubbock business was being operated in the name of Clark's-Gamble, Inc.[134]

Nevertheless, the court took the first step in the possible closing of the local stores when jurors in the 140th District Court agreed that Sundaco, Inc. served as an agent for Clark's-Gamble, Inc., in selling prohibited merchandise on Sundays.[135] Although the verdict was an important move

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[133]"Store Loses Court Bout," Lubbock Avalanche Journal, Oct. 27, 1971, sec. A, p. 1.

[134]"Sunday Sale Law Trial To Continue," Lubbock Avalanche Journal, Oct. 26, 1971, sec. B, p. 7.

[135]Lubbock Avalanche Journal, Oct. 27, 1971, sec. A, p. 1.

toward the permanent injunction sought by Purdom to keep the store from operating on both Saturdays and Sundays in apparent violation of the state law. Judge Shaver delayed entering final judgment in the suit until defense attorneys had exhausted statutory time limits for filing motions and appeals.

The jury's ruling, which came after only nineteen minutes of deliberation, was aimed only at the local Sundaco and Clark's-Gamble operation and not at other local stores which were operating on both Saturdays and Sundays. Purdom expressed confidence, however, that other stores in Lubbock would cease such operations if the injunction against Clark's-Gamble was granted. But, he issued a warning to other possible violators saying "I intend to file other suits if necessary to force compliance with the law."[136]

Less than a month after the jury's ruling that Sundaco, Inc. was serving as an agent for Clark's-Gamble in selling merchandise on Sundays, Judge William R. Shaver granted the injunction which County Attorney Tom Purdom had requested by defense attorneys for a court ruling in the store's favor on the points of law, "the jury verdict notwithstanding."[137] The points of law in the suit included whether certain items

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[136] Ibid.

[137] "Judge Grants Injunction on Sunday Closing," Lubbock Avalanche Journal, Nov. 24, 1971, sec. A, p. 9.

were sold by the store on both Saturdays and Sundays in violation of the law and whether such items were being sold by the same company.

But, Judge Shaver overruled the defense motion by granting the injunction and set a $3,500 bond for store officials to insure "diligent pursual" of their proposed appeal of his decision.[138] The injunction, however, applied only to the one store involved in the suit. And, Purdom pointed out that the injunction against Sunday sales by the store could not be enforced until final settlement of the appeals which would be taken to the appellate courts.

Although Purdom later said that information he had received from Sundaco attorneys indicated they were proceeding with an appeal of the Lubbock decision,[139] county court officials reported that they had received no requests from the company's attorneys for copies of records necessary for the appeal, despite the fact that Judge William R. Shaver had ordered company officials to post bond to insure pursuance of their appeal. There was also speculation by some observers that a necessary document in the case may have been filed too late.

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[138] Ibid.

[139] An amended motion for a new trial had been filed in the district clerk's office.

The amended motion for a new trial had been sent to Lubbock via certified mail which was postmarked December 21, the day before the deadline for making such a filing. Because of the holiday schedule at the courthouse, however, the motion was not placed in file until several days after the deadline. This led one observer to comment that

> The motion may not have been legally filed until after the deadline for filing. But this is a technical question which no one has officially raised as yet.[140]

Less than two months after Judge Shaver granted the injunction, however, Sundaco officials, whose appeal of the judge's ruling was still in progress, succumbed to pressure. which had been brought upon them by both Purdom and several local businesses and notified Purdom that they would begin closing their store the second weekend in January. But, the store manager, Larry Combs, cautioned that "a lot will depend upon whether the other stores also close."[141]

Following Sundaco's surprise announcement, most other Lubbock store managers indicated that they would also follow suit. In addition to the Sundaco operation at the local Cook's Discount Store, the stores included the two Gibson Discount Centers, K-Mart, Globe Shopping City, and the eight

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[140] "Informal Pact May End 'Blue Law' Furor Here," Lubbock Avalanche Journal, Jan. 8, 1972, sec. A, p. 1.

[141] Ibid.

TG & Y stores. According to Purdom,

> At the start of the Sundaco case, the managers of several stores agreed informally they would cease sales of prohibited items on both Saturdays and Sundays if we gained an injunction against Sundaco for such operations.[142]

Technically, however, this agreement was unenforceable since the final injunction, pending Sundaco's appeal, had never been granted and the agreement was an informal understanding between Purdom and the various local merchants.

Nevertheless, officials at Furr's Family Center and at Skaggs-Albertson's indicated that their stores would continue to remain open but that certain items at those stores would not be sold on Sundays. The assistant manager of the Furr's Family Center, Ron Parker, stated that

> The non-food portion of the Family Center will be closed Sunday in accordance with the law. The grocery side, however, will remain open Sunday, but none of the prohibited items will be sold.[143]

And, Gordon Berggren, the manager of Skaggs-Albertson's was critical of "those crazy blue laws" which he said allowed retailers "to sell hammers and saws, but prohibit the sale of tacks." Berggren further stated that "We will be open Sunday in compliance with the law." He emphasized, however, that

> If necessary, we will cover the counters which carry prohibited merchandise, but we will still be able legally

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[142] "Shoppers Split Evenly on 'Blue Law' Here," Lubbock Avalanche Journal, Jan. 9, 1972, sec. A, p. 1.

[143] Lubbock Avalanche Journal, Jan. 8, 1972, sec. A, p. 10.

> to sell groceries, school supplies, cosmetics, automobile parts and other items..."[144]

The district manager of the TG & Y stores in Lubbock, R. J. Harris said "We will be closed Sunday, and we intend to remain closed on Sundays thereafter, unless other retailers reopen their stores on Sundays."[145] A one-week postponement of the initial Sunday-closing was announced by the manager of Globe Discount Center, George Hoak, who blamed a sale and prepublished advertising as the reason for remaining open.

The manager said that he had talked with the County Attorney, Tom Purdom, and explained that the store had run an advertisement in the paper for special items that would be on sale. He said that he had explained to Purdom that the advertisement could not be taken out of the paper but that he had agreed to begin closing the store the following Sunday. But, Hoak questioned whether the citizens of Lubbock were really in favor of Sunday closing. Pointing to the overcrowded store, the manager said, "It depends on what the people want" whether or not stores should be permitted to be open on Sundays.[146] The manager said, however, that Globe would be closed in the future unless other stores began

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[144] Ibid.

[145] Ibid.

[146] Ibid.

re-opening on Sundays.

Meanwhile, a possible chink in what appeared to be an otherwise harmonious agreement was made when the two Gibson Discount Stores announced plans to close one store on Saturday and the other store on Sunday. Elmer Stallmaker, the assistant manager of the Gibson store located on 50th Street and Avenue H, said that the Gibson's would close the Avenue H store on Sundays and the store at 50th and Slide Road on Saturdays.[147] But, the plan drew fire from a competitor who argued that both stores should choose one closing day. The competitor, who was the manager of another large firm which operated only one store in Lubbock, accused Gibson's of using "cherry picking" tactics.

Shortly after making its announcement, however, Gibson's ran an advertisement in the Lubbock Avalanche Journal advertising the new weekend store hours for the Slide Road store as being from 10 A. M. to 7 P. M. on Sundays but "closed Saturday." A separate advertisement in the same newspaper announced that the pharmacy at the Slide Road store would be open on Saturdays "to serve your prescription needs only!" This was in compliance with the state blue law which exempted the sale of pharmaceutical items on Sundays.

Commenting on Gibson's announcement, County Attorney Tom

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[147] Lubbock Avalanche Journal, Jan. 8, 1972, sec. A, p. 10.

Purdom said, "The opening of one Gibson's store on Sunday and the other on Saturdays would comply with the law as I understand it." According to Purdom,

> This is because the stores are two separate operations and not part of a centrally operated chain. The Gibson's stores in Dallas operate on that basis and as far as I'm concerned, TG & Y stores here could operate that way too.[148]

But, TG & Y officials emphasized that they had not discussed such an arrangement.

Lubbock citizens, meanwhile, were reacting differently over the sudden and dramatic announcements regarding the possible Sunday closing of local businesses. In a poll by the Avalanche Journal of fifty shoppers selected at random, twenty-two people said they agreed with the Sunday closing law, twenty-two said they were against the law and six were undecided. Of those questioned, only four mentioned the religious aspects of Sunday closings, but seven persons said they believed that workers should be able to spend Sundays with their families.

A variety of reasons were given for individual attitudes which appeared rather evenly divided for and against the state blue law. Most of those who said they favored the Sunday closing law also indicated that they rarely did much shopping on Sundays. The vast majority of those against the blue law, on the other hand, said they like to shop on Sundays. Critics

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[148] Ibid.

of the law, for example, argued that the discount stores had good prices on their merchandise and that Sunday was the only day many people had to shop.

Although the blue law issue in Lubbock appeared to be temporarily settled, many store managers, who maintained that Sundays were among their best business days, complained of a loss of business as a result of the weekend closings. In addition, some observers pointed out that the issue was only temporarily settled since several of the stores presently involved, including Skaggs-Albertson's, were not operating at the time the informal agreement was reached between Purdom and various Lubbock merchants. Also, several businessmen felt the agreement was binding and that competition during the Christmas shopping season would force them into opening their stores again.

CHAPTER VII

SUMMARY AND CONCLUSION

The Texas Blue Law, which forbids the sale of power tools but permits the sale of hand tools on Sunday, has been described as a law going back to "horse and buggy days." Although the blue law has been amended twelve times since its original enactment in 1863, the law continues to remain one of the most controversial pieces of legislation ever enacted. Proponents of the blue law argue that such laws are necessary to protect the health and welfare of society by insuring an individual a day of rest from his labors and are, therefore, constitutional under the police powers of the state. Most opponents, however, point out that Sunday laws, which only in recent times have taken on economic implications, are deeply grounded in the religious beliefs of previous generations, and because such laws are religious in nature, they deprive some individuals of their religious beliefs and are, therefore, unconstitutional.

Following the Second World War, three important developments have revived the question of Sunday closing laws. In the first place, a by-product of the religious revival was a renewed effort to enforce and to redefine state Sunday laws. The general idea has been to eliminate all business transactions on Sunday except those that are necessary. For

example, department stores would be closed but pharmacies could remain open.[1] The major opposition to Sunday openings, however, has not come from religious groups but from commercial groups, with the latter having "organized" the former. And, this is the main reason why the more recent blue laws are so peppered with selfish exemptions.[2]

A second major development has been the drastic changes that American families have made in their shopping habits. Especially in the growing motorized suburbs, Americans have been making an increasing amount of purchases of major household items and clothing on Sunday. It is a fact that millions of shoppers have shown their approval of Sunday store hours by patronizing stores which are open on that day.[3] One indication of this approval is shown by the fact that as much as thirty per cent of the week's business for many retailers may be done on Sunday.[4]

A third development has been the public support shown by the Catholic clergy for the enforcement of Sunday closing laws. Through their support, the Sunday law movement, which

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[1]Murray S. Stedman, Jr., Religion and Politics in America (New York: Harcourt Brace World, 1964), p. 72.

[2]E. B. Weiss, "Never on Sunday," Stores, March, 1968, p. 28.

[3]Ibid.

[4]E. B. Weiss, "Sunday Retailing Ahead," Advertising Age, June 6, 1960, p. 78.

has been strongly backed by many years by the Lord's Day Alliance, a protestant organization, has received vigorous reinforcement. It should also be remembered that both state and local councils of most protestant churches generally support state and city Sunday closing laws. This is true even when the various national denominations have been silent, as they must be where the diversity of state blue laws is too staggering for a general statement to carry much weight locally.[5]

Nevertheless, a large segment of society has come to accept Sunday retailing in innumerable forms, which according to one observer, "is peppered with innumerable...idiotic, ironic, cynical, and even hypocritical angles."[6] There are numerous options leading to retail functions on Sunday which do not require the store doors to be open. Many department stores that fight Sunday openings, for example, promote telephone shopping on Sunday. Within the past few years Sears, in national advertising, has stated:

> With your Sears catalog in front of you, you can order from Sears by telephone in 43 cities at any time of day or night, seven days a week, 365 days a year. Just dial the Sears number and tell the girl what you want. She'll have it delivered.[7]

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[5]Stedman, Religion and Politics, p. 72.

[6]Weiss, "Never on Sunday," p. 28.

[7]Ibid., p. 29.

Moreover, mail order purchasing is another means of promoting Sunday retailing. Obviously, shopping a catalog on Sunday is no different than shopping a retail store insofar as making a retail purchase on Sunday is concerned.

While the Texas blue law specifically prohibits forty-two items from being purchased on the two consecutive days of Saturday and Sunday, no uniform guidelines have been established for stores, which are open on both days, to follow in indicating to customers which items can be sold and which items cannot be sold. As a result, many stores either cover those items which are not for sale with plastic coverings or display signs on the counters where the prohibited merchandise is located. Thus, shoppers are permitted to see merchandise in the store and thereby make some decision about items which may be purchased at a later date.

One of the arguments which blue law proponents use to support Sunday closing laws is that not only should everyone be insured a weekly day of rest but also a uniform day of rest should be created for the maximum number of people. Thus, an employee would not be deprived of sharing his leisure time with his family or friends because of employment obligations. By custom, it is argued, Sunday would be the most appropriate uniform rest day.

This reasoning unquestionably assumes that most people are employed in the kinds of retail trade which Sunday closing

laws ban. The United States Department of Labor reports, however, that only about sixteen per cent of nonagricultral labor works in retail stores. The question which logically arises is: Why should not the restaurant, gas station, hotel, or real-estate business employee also be guaranteed a share in the benefits of the uniform rest day? Blue law supporters contend that those individuals who labor within the exempt catagories are employed in businesses where Sunday operations are of a necessity. But, this argument creates problems in consistently applying the term "necessity."[8]

Many Sunday law opponents point out that blue laws, which are supposedly designed to create more leisure time for workers, acutally have the opposite affect by forcing employees to work longer nocturnal hours. Since many retailers account for only five to fifteen per cent of the day's volume by noon, there is a growing trend for many of the larger chain stores not only to open on Sunday but also to remain open for longer hours on weekdays. When stores are prohibited from selling or offering for sale a large volume of their merchandise on Sunday, they respond to customer demands for longer shopping hours. Thus, employees are adversely affected by being forced to work longer nocturnal hours.

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[8]Marshall D. Ossey, "The Blue-Law Merchants," Liberty, January--February, 1967, p. 16.

Nevertheless, traditionalists have used superior lobbying power over the years to acquire from the Texas legislature Article 286(a), which has been described as "the law most obviously written by lobbyists." However, enforcement of the state blue law is left primarily to local officials with no special funds or state help for its enforcement.

Many complex and extremely difficult problems have been encountered by city officials in Texas who have endeavored to maintain wide-scale enforcement of the state's Sunday closing law. The experience of the city of Houston during a major enforcement campaign in the winter of 1960 and the spring of 1961, for example, illustrates the inherent enforcement problems associated with enforcing such laws. And, in Houston, as in other cities, the pre-eminent problem has been that of policing.

The city of Houston nad four basic choices regarding enforcement techniques. These choices were: cutting into the regular police force, working policemen overtime, hiring special enforcement squads, and relying on "vigilantes." Each of these four choices was both objectionable and ineffective. If the city had chosen to cut into the regular police forces and assigned a special squad the responsibility of checking on businesses which were open on the days required for closing, objections regarding the city's obligation to protect the public safety of its inhabitants would result.

This course would also involve the problem of efficient use of the limited manpower which is available to a city police force. Thus, a city's governing body is confronted with the basic question of which needs more attention, major crime investigation, traffic regulation and the everyday requirements of a city's people, or the business district in an effort to keep people from buying and selling merchandise one day of the week?[9]

If the Houston campaign could be used as an indicator, the decision would be to detach only a small force to police the blue law violators. The special squad assigned to enforce the Sunday law in Houston numbered at various times from as few as five to a high of fifteen officers. Since they were attempting to patrol a city of almost one million inhabitants, it cannot be seriously argued that the "blue law squad" constituted a threat to either the city's regular police duties or to Sunday lawbreakers. In addition, the decision to employ only a small force raises a second objection to the use of regular police for such duties, discriminatory law enforcement. Both the Houston mayor and the chief of police were quite candid and made no effort to disguise the fact that only certain types of businesses were being watched from week to week.

If a city does not choose to reduce its regular force,

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[9]Ericson, "From Religion to Commerce," p. 55.

it can provide the extra police strength by requiring its regular police to work overtime on Sunday. This, however, conflicts with the state statutes on hours and wages and, therefore, makes the payment of overtime wages mandatory. In turn, it is understandable why a city council is besieged by indignant citizens wanting to know why such added expense is not used to apprehend burglars and murderers instead of keeping merchants from doing business. Neither should it be overlooked that most policemen are already required to undertake many off-time and overtime duties, including in-service training sessions and testimony in court.[10]

The decision to take the third course of action would face an additional objection to those already mentioned. This course involves the employment of extra men to work only on Sundays. For the law to be enforced without discrimination, such a special Sunday force would have to be sufficiently large, which would again cause economic problems for municipalities. Moreover, such a course would put into uniform amateur officers who would be of necessity, less informed and experienced in the rules of evidence. And, this would be a significant factor because, as was true in the first weeks of the Houston enforcement campaign, most of the charges would be dismissed for lack of evidence even though policemen were being used. Thus, one or two successful suits

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[10] Ibid., p. 56.

for false arrest resulting from the activities of overzealous amateurs would probably result in a curtailment of enforcement activities.[11]

The use of private citizens operating as "vigilantes" presents a fourth course of action which is also objectionable. It was widely utilized in the Houston campaign during 1961 and was initiated by a lumber dealer who had been repeatedly arrested while other offenders were not molested at all by the city's law enforcement officers. The dealer gathered a few friends and began making citizen's arrests of other merchants who were also doing business on Sunday. His actions, in turn, posed some fundamental questions for law enforcement in general. Should such acts of difiance be encouraged? Should one neighbor be compelled to spy on another neighbor because of such laws? Are legislative officials ever justified in enacting laws which the state cannot enforce, in the main, by its own officers?[12]

Another important problem posed by blue law enforcement is that of discriminatory enforcement. Respect for the law is primarily based on the principles of equal protection and equal enforcement. Therefore, a law which is applied in a discriminatory manner generally leads to violation by

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[11] Ibid.

[12] Ibid.

inculcating disrespect for both the law and law enforcement.

Considering the nature of blue laws, it is thus obvious that the problems of enforcement previously described pertains primarily to larger rather than smaller cities. It is generally agreed that most average sized cities can enforce the Sunday closing laws by using their regular police and not diverting too much attention from their regular duties. But, this view ignores the great mobility of people in this modern age. While every town within a hundred miles of a large city may be closed for business on Sunday, if a substantial number of businesses in the metropolitan city remain open Sundays, it is reasonable to expect that large numbers of their patrons will come from the surrounding towns. As a result, not only the businesses which are forced to close in the larger city but every businessman in the surrounding towns, who would like to be open is adversely affected. There are very few areas in Texas which are far removed from some central city. Consequently, if businesses in the larger cities remain open, because of the difficulty in policing, businesses in smaller towns become the subjects of another type of discriminatory enforcement.[13]

In addition, the Houston enforcement campaign disclosed another important facet of the problems encountered enforcing the blue laws. The city, which was attempting to enforce

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[13] Ibid., p. 57.

a state statute, could file charges in either the corporate or in the justice court. However, those charges filed in corporation court where convictions were obtained could be appealed to the county court, another state court. By the end of six months of enforcement, over 500 charges had been filed by the Houston police but only about half of them had been processed. While over 200 convictions had been obtained in corporation court, more than 100 were appealed to the county courts. Only twenty-six cases had been reviewed by the county courts, however, with twenty-four convictions being quashed, one conviction overruled, and the remaining conviction upheld.[14]

Thus, the seemingly inescapable conclusion is that the Texas blue laws cannot be enforced by a policing authority large enough to do the job without undue discrimination against offenders. They should, therefore, be classed as statutes which, because of their impracticality of enforcement deprive the citizen of the ability to judge the merits of the law. Such statutes serve only to create a legal climate that encourages avoidance and even evasion of the law by citizens as well as selective and discriminatory enforcement by the officers who are sworn to uphold their provisions.[15]

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[14] Ibid.

[15] Ibid., p. 58.

Besides the many problems encountered in enforcing blue laws, such laws are also opposed on the grounds that they are religious in nature and conflict with the constitutional guarantee of freedom of religion. The most ardent opponents of blue laws are the Seventh-day Adventists. The Adventists, who emphasize that they have no quarrel with, nor take sides, in the Sunday closing issue between downtown and suburban merchants, concern themselves with the problem of Sunday laws because such legislation, they argue, is involved in the whole problem of church-state relations and religious liberty. Consequently, the Seventh-day Adventist church opposes Sunday laws not only because they cause hardship but also because they contravene the principle of separation of church and state.[16]

Seventh-day Adventists maintain that they are opposed in principle to all types of Sunday laws (or, for that matter, Saturday laws) because the laws have religious implications tending to state recognition of Sunday (or Saturday) as a Holy Day and therefore enter the area of state or city prescription of religious observances and open the door to religious discrimination. It is their belief that blue laws, which have their roots in religion, conflict with the Bill

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[16]Department of Public Affairs and Religious Freedom, Southwestern Union Conference of Seventh-day Adventists, "Sunday Laws: Principle or Pressure," p. 1. (Typewritten.)

of Rights, the first of which states "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Adventists argue that it was the intention of our forefathers to build a wall of separation between the police power of the state and the doctrines of the church.

While Adventists are sympathetic to many of the aims and desires of those who support Sunday laws, they maintain that our forefathers separated church and state not because they were antagonistic to the church, but rather because they loved the church; the wall of separation, Adventists contend, was to be a wall of protection for both church and state. Although Chief Justice Earl Warren of the U. S. Supreme Court agreed with the Adventists arguement that Sunday laws have their roots in religion, he ruled that the laws had outgrown their ecclesiastical roots and have become simply health, welfare, and recreation laws. But, Adventists question whether health and welfare are really advantaged by laws that makes criminal on Sunday that which is legal on all other days. They contend that most people back Sunday laws never knowing that such laws do not insure a man Sunday rest. They point out that blue laws simply insure that he will not sell certain items on Sunday.[17]

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[17] Ibid., pp. 1, 8-9.

Adventists question why the selling of beer, which the present Texas Sunday law permits, is considered to be to the welfare of a community, but the sale of a pair of socks is not. And, they furthner ask: In a community where men have rested on Saturday, does it constitute to their health and welfare to be forced to rest also on Sunday? One Adventist opponent has asked this thought provoking question:

> If the faces of these Sunday laws are not religious--from the holy time halo on most state law's heads to the 'desecration dimple' on other state law's chins--what kind of plastic surgery will legislative doctors have to perform to make the religious wrinkle apparent through legal bifocals?[18]

Seventh-day Adventists, who observe the seventh day of the week, Saturday, as the Sabbath, cite the remarks of Mayor Lewis Cutrer during the 1961 Houston controversy as an example of the misconception of those who use the fourth commandment to support Sunday laws. Before some 100 clergymen and others who crowded into his office, the mayor suggested that he must support Sunday laws, because the fourth commandment says, "Remember the Sabbath day to keep it holy. Six days shalt thou labor and do all thy work, but the seventh day is the Sabbath of the Lord thy God." Whereupon a layman in the crowd arose and said, "But Mr. Mayor, if you will consult the calendar behind you, you will see that the Sabbath comes on Saturday, not Sunday; Sunday is the first day of the week."

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[18] Ibid., p. 10

The mayor swiveled around, looked at the calendar, and finally turned back to the many clergymen present with a beseeching look that said, "Please help me fellows; how do you answer this one?" No one present said a word![19]

Despite the problems associated with enforcing Sunday laws, which have been consistently upheld by the U. S. Supreme Court as constitutional, and despite their opposition because of religious reasons, blue laws are continuing to be enforced on a statewide basis. While their future effect is admittingly difficult to predict, it is certain that their impact will continue to be influenced by the inter-related social, political, economic, and religious thinking of society. Depending on these delicate influences and the combined pressures exerted by not only Texas but also other states, most of which have some type of blue law at present, many observers are of the opinion that a national Sunday law will eventually be passed setting forth uniform requirements which will be enforced on a national level.

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[19] Ibid., p. 18.

APPENDIX I

An Act to Punish Certain Offenses Committed on Sunday[1]

Section 1. Be it enacted by the Legislature of the State of Texas, That any person or persons who shall hereafter labor, or compel, force or oblige his or her employes, workmen or apprentices to labor on the Lord's day, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum of not less than ten, nor more than fifty dollars; provided, that household duties, works of necessity and charity shall not be prohibited by this act; and provided further, that this act shall not apply to any work done on plantations and farms that may be necessary to prevent the loss of any crop or crops.

Sec. 2. That nothing in the foregoing section shall be so construed as to apply to the running of steamboats or other water crafts, rail cars, wagon trains, common carriers, or to the delivery of goods by them or the receiving or storing of said goods by the parties or their agents to whom said goods are delivered, or to stages carrying the United States mail or passengers, foundries, sugar mills, or to stock keepers or herders who have a herd of stock actually gathered and under herd, or to persons traveling on the public highway, or ferrymen or keepers of toll bridges, keepers of hotels, boarding houses, restaurants and their servants, keepers of livery stables and their servants; provided, that nothing herein be so construed as to apply to any person who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for secular reasons.

Sec. 3. That any person or persons who shall run or be engaged in running any horse races or who shall permit or allow the use of any nine or ten pin alley, or who shall be engaged in match shooting or any species of gaming for money or other consideration, within the limits of any city or town on Sunday, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty nor more than fifty dollars.

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[1]Texas. Laws, Statutes, etc., General Laws of the State of Texas, 12th Legislature, Second Session, 1871, Ch. LXXVII as given in H. P. N. Gammel, The Laws of Texas, 1822-1897, VII (Austin: The Gammel Book Company, 1898), 64-65.

Sec. 4. That any merchant, grocer or dealer in wares or merchandise or trader in any lawful business whatsoever, who shall sell or barter on Sunday between tne hours of 9 o'clock A. M. and 4 o'clock P. M. within the limits of any city or town, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum of not less than twenty nor more than fifty dollars; provided, that nothing contained in this act shall be construed to prohibit the sale of drugs and medicines on Sunday.

Sec. 5. That an act entitled "an act to punish certain offenses committed on Sunday," approved December 16, 1863, and all other laws and parts of laws contrary to or conflicting with the provisions of this act are hereby repealed, and that this act be in force from and after its passage.

Approved December 2, 1871.

APPENDIX II

An Act to Amend Article 186 of the Penal Code[1]

Section 1. Be it enacted by the Legislature of the State of Texas: That Article 186 of the Penal Code be amended so as hereafter to read as follows, to wit:

"Article 186. Any merchant, grocer, or dealer in wares or merchandise, or trader in any lawful business whatsoever, or the agent or employee of any such persons, who shall sell or barter on Sunday, shall be fined not less than twenty, nor more than fifty dollars; provided this article shall not apply to markets or dealers in provisions as to sales of provisions made by them before nine o'clock a. m., nor the sale of burial or shrouding material; provided, the sale of newspapers, ice and milk at any hour in the day shall be permissible; provided further, that nothing in this title shall be construed to prevent the sending or receiving of telegraph messages."

Approved April 10, 1883.

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[1] Texas. Laws, Statutes, etc., General Laws of the State of Texas, 18th Legislature, Regular Session, 1883, Ch. LXIX as given in H. P. N. Gammel, The Laws of Texas, 1822-1897, IX (Austin: The Gammel Book Company, 1898), 372-73.

APPENDIX III

Amending the Sunday Law--Additional Exemptions[1]

Section 1. Be it enacted by the Legislature of the State of Texas: That Article 183 of the Penal Code of the State of Texas, and that An Act to amend Article 186 of the Penal Code, approved April 10, A. D. 1883, be amended so as hereafter to read as follows:

Article 183. Any person who shall hereafter labor, or compel, force, or oblige his employes, workmen, or apprentices to labor, on Sunday, or any person who shall hereafter hunt game of any kind whatsoever on Sunday within one-half mile of any church, school house, or private residence, shall be fined not less than ten nor more than fifty dollars.

Article 186. Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employe of any such person, who shall sell or barter, or permit his place of business or place of public amusement to be open for purpose of traffic or public amusement, on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term place of public amusement, shall be construed to mean circuses, theatres, variety theatres, and such other amusements as are exhibited and for which an admission fees is charged; and shall also include dances at disorderly houses, low dives, and places of like character, with or without fees for admission.

Article 186a. The preceding article shall not apply to markets or dealers in provisions as to sales of provisions made by them before 9 o'clock a. m., nor to the sale of burial or shrouding material, newspapers, ice, ice-cream, milk, nor to the sending of telegraph or telephone messages at any hour of the day, nor to keepers of drug stores, hotels, boarding houses, restaurants, livery stables, barber shops, bath houses, or ice dealers, nor to telegraph or telephone offices.

Approved, April 2, 1887.

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[1]Texas. Laws, Statutes, etc., General Laws of the State of Texas, 20th Legislature, Regular Session, 1887, Ch. CXVI as given in H. P. N. Gammel, The Laws of Texas, 1822-1897, IX (Austin: The Gammel Book Company, 1898), 906.

APPENDIX IV

Amends article 186a, Penal Code, approved April 2, 1887; exemptions.[1]

Section 1. Be it enacted by the Legislature of the State of Texas: That article 186a of the Penal Code of Texas, approved April 2nd, 1887, be amended so as to hereafter read as follows:

Article 186a. The preceding article shall not apply to markets or dealers in provisions as to sales of provisions made by them before 9 o'clock a. m. nor to the sale of burial or shrouding material, newspapers, ice, ice-cream, milk, nor to the sending of telegraph or telephone messages at any hour of the day, nor to keepers of drug stores, hotels, boarding houses, restaurants, livery stables, bath houses, or ice dealers, nor to telegraph or telephone offices.

Sec. 2. The near approach of the close of the present session of the Legislature creates an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

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[1] Texas. Laws, Statutes, etc., General Laws of the State of Texas, 22nd Legislature, Regular Session, 1891, Ch. CX as given in H. P. N. Gammel, The Laws of Texas, 1822-1897, X (Austin: The Gammel Book Company, 1898), 175-76.

APPENDIX V

Article 283. 299, 196, 183 Working on Sunday[1]

Any person who shall labor, or compel, force, or oblige his employes, workmen, or apprentices to labor on Sunday, or any person who shall hunt game of any kind whatsoever on Sunday within one-half mile of any church, school house, or private residence, shall be fined not less than ten nor more than fifty dollars. Act Dec. 16, 1863, Act Dec. 2, 1887, Acts 1887, p. 108.

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[1] Vernon's Annotated Penal Code of the State of Texas, I (Kansas City: Vernon Law Book Company, 1952), 327.

APPENDIX VI

Art. 284. 300, 197 Not applicable[1]

The preceding article shall not apply to household duties, works of necessity or charity; nor to necessary work on farms or plantations in order to prevent the loss of any crop; nor to the running of steamboats and other water crafts, rail cars, wagon trains, common carriers, nor to the delivery of goods by them or the receiving or storing of said goods by the parties or their agents to whom said goods are delivered; nor to stages carrying the United States mail or passengers; nor to foundries, sugar foundries, sugar mills, or herders who have a herd of stock actually gathered and under herd; nor to persons traveling; nor to ferrymen or keepers of toll bridges, keepers of hotels, boarding houses and restaurants and their servants; nor to any person who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons. Act Dec. 2, 1871, Acts 1871, p. 62. Amended in revising 1879.

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[1] Ibid., pp. 329-30.

APPENDIX VII

Art. 285. 301, 198 Horse racing or gaming on Sunday[1]

Any person who shall run or be engaged in running any horse race, or who shall permit or allow the use of any nine or ten pin alley, or who shall be engaged in match shooting or any species of gaming for money or other consideration, within the limits of any city or town on Sunday, shall be fined not less than twenty nor more than fifty dollars. Acts 1871, p. 62.

Art. 285. Horse racing or gaming on Sunday[2]

Any person who shall run or be engaged in running any horse race, or who shall be engaged in match shooting or any species of gaming for money or other consideration, within the limits of any city or town on Sunday, shall be fined not less than Twenty Dollars ($20) nor more than Fifty Dollars ($50). As amended Acts 1963, 58th Leg., p. 95, ch. 55, §1.

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[1] Ibid., p. 331.

[2] Ibid., See Cumulative Annual Pocket Part, p. 91. This article was amended by the state legislature in 1963, adding a new article 286(a) making the provisions inapplicable to bowling alleys.

APPENDIX VIII

Art. 286. 302, 199, 186 Selling goods on Sunday[1]

Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employe of any such person, who shall sell, barter, or permit his place of business or place of public amusement to be open for the purpose of traffic or public amusement on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term place of amusement, shall be construed to mean circuses, theaters, variety theaters and such other amusements as are exhibited and for which an admission fee is charged; and shall also include dances at disorderly houses, low dives and places of like character, with or without fees for admission. Act. Dec. 2, 1871, Acts 1883, p. 66, Acts 1887, p. 108.

Art. 286a. Application of article 286 to bowling alleys[2]

The provisions of Article 186, Penal Code of Texas, 1925, shall not be applicable to bowling alleys. Added Acts 1963, 58th Leg., p. 95, ch. 55, § 2.

Art. 286a. Sale of goods on both the two consecutive days of Saturday and Sunday[3]

Prohibition of sales; items; misdemeanor

Section 1. Any person, both the two (2) consecutive days of Saturday and Sunday, who sells or offers for sale or shall compel, force or oblige his employees to sell any clothing; clothing accessories; wearing apparel; footwear; headwear; home, business, office or outdoor furniture; kitchenware; kitchen utensils; china; home appliances; stoves; refrigerators; air conditioners; electric fans; radios; television sets; washing machines; driers; cameras; hardware; tools, excluding nonpower driven hand tools; jewelry; precious or semi-precious stones; silverware; watches; clocks;

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[1] Vernon's Penal Code of Texas, p. 332.

[2] Ibid., See Cumulative Annual Pocket Part, p. 92.

[3] Ibid., p. 93.

luggage; motor vehicles; musical instruments; recordings; toys, excluding items customarily sold as novelties and souvenirs; mattresses; bed coverings; household linens; floor coverings; lamps; draperies; blinds; curtains; mirrors; lawn mowers or cloth piece goods shall be guilty of a misdeanor. Each seperate sale shall constitute a separate offense.

Sales for charitable and funeral or burial purposes; real property sales

Sec. 2. Nothing herein shall apply to any sale or sales for charitable purposes or to items used for funeral or burial purposes or to items sold as a part of or in conjunction with the sale of real property.

First offense; subsequent convictions; penalties

Sec. 3. For the first offense under this Act, the punishment snall be by fine of not more than One Hundred dollars ($100.00). If it is shown upon the trial of a case involving a violation of this Act that defendant has been once before convicted of the same offense, he shall on his second conviction and on all subsequent convictions be punished by imprisonment in jail not exceeding six (6) months or by a fine of not more than Five Hundred Dollars ($500.00), or both.

Purpose; public nuisances; injunction; application and proceedings

Sec. 4. The purpose of this Act being to promote the health, recreation and welfare of the people of this state, the operation of any business whether by any individual, partnership or corporation contrary to the provisions of this Act is declared to be a public nuisance and any person may apply to any court of competent jurisdiction for and may obtain an injunction restraining such violation of this Act. Such proceedings shall be guided by the rules of other injunction proceedings.

Emergency purchases; certification

Sec. 4a. Repealed. Acts 1967, 60th Leg., p. 79, ch. 39, 1, eff. Aug. 28, 1967.

Occasional sales

Sec. 5. Occasional sales of any item named herein by person not engaged in the business of selling such item shall be exempt from this Act.

Legislative intent

Sec. 5a. It is the intent of the Legislature that Articles 286 and 287 of the Penal Code of Texas are not to be considered as repealed by this Act; provided, however, that the provisions of said Articles shall not apply to sales of items listed in Section 1 of this Act which are forbidden to be sold on the day or days named in this Act. Acts 1961, 57th Leg., 1st C. S., p. 36, ch. 15, eff. Nov. 7, 1961.

APPENDIX IX

Art. 287. Permitting sale of certain articles on Sunday; regulations as to motion picture shows[1]

The preceding Article shall not apply to markets or dealers in provisions as to sales of provisions made by them before nine o'clock A. M., nor to the sales of burial or shrouding material, newspapers, ice, ice cream, milk, nor to any sending of telegraph or telephone messages at any hour of the day or night, nor to keepers of drug stores, hotels, boarding houses, restaurants, livery stables, bath houses, or ice dealers, nor to telegraph or telephone offices, nor to sales of gasoline, or other motor fuel, nor to vehicle lubricants, nor to motion picture shows, or theatres operated in any incorporated city or town, after one o'clock P. M.

Sec. 2. The Commissioners or City Council of the towns or cities in which said motion picture shows or theatres are located shall have the right and power by proper ordinance to prohibit or regulate the keeping open or showing of such motion picture shows or theatres on Sunday. Acts 1925, 39th Leg., p. 347, ch. 139, 1; Acts 1931, 42nd Leg., p. 195, ch. 116.

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[1] Vernon's Penal Code of Texas, p. 339.

APPENDIX X

Example of Certificate of Necessity[1]

"I hereby certify that the following item(s) of personal property are needed by me as an emergency for the welfare (————————) of human (————————) life;

[here follows a space for listing the items purchased]

and that the purchase of each such item is an emergency purchase to protect the welfare (————————) of human (————————) life, and I have so advised Shoppers World, from whom I have purchased such item(s).

————————

Signature"

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[1] Texas v. Shoppers World, Inc., 380 S. W. 2d. 109 (1964).

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