

Un-enacted “Laws”

by Dale Morse

Here’s another article that touches on the consequences of personal belief. If you’re charged with violating a “law” that’s clearly published in a law book, like most of us, you will believe the “law” is valid, you are subject to the law, and your only defense is that you did not commit an act or omission that violated the alleged “law”. But maybe not every act that’s published in a law book is truly a “law”. Maybe our uncritical belief in publication is causing us to pay unconstitutional penalties.

Most students of the legal or political system understand that for a particular bill to become state law, it must be proposed and passed by a majority of one house of the state legislature, passed by a majority of the members of the legislature’s second house, and finally signed by the governor. One, two; one, two three — House, Senate, Go-ver-NOR! The legislative cha-cha.

But here in the Lone Star State (and probably other states as well), they’ve added a “Texas Two-Step” to the traditional legislative cha-cha and created a “Dosey-Doe Due Process” that may ultimately cause government to do the Twist:

1) Texas Constitution Article 4, Section 21, mandates

that the Secretary of State, “. . . shall *authenticate* the publication of the laws . . .”; and,

2) Article 3, Section 29 of the Texas Constitution mandates: “The enacting clause of all laws shall be: ‘Be it *enacted* by the Legislature of the State of Texas.’”

In other words, it’s not enough that both houses of the legislature voted to pass a law, and the governor approved it with his signature. The law must also be “enacted” and “authenticated” by the Secretary of State. Preliminary research suggests that half or more of the statutes of Texas have not been “authenticated” and/or “enacted”, are therefore constitutionally null and void and provide no lawful cause for arrest, indictment, prosecution or civil/administrative penalty. If so, anyone ticketed or indicted based on alleged “law” that is “un-enacted” or “un-authenticated” is being hustled. The implications are huge.

It’s too early to confirm that this argument works, but so far, the handful of petitions that have employed this strategy have set the appellate courts back on their heels. Some cases completely disappear, and to date, none have lost. Of course, none have won yet, ei-

ther. The issue is not resolved, so don’t rely on this defense without doing extensive personal research.

This “enactment/ authentication” strategy’s most intriguing aspect was implied in a conversation between Dale Morse and two attorneys who work closely with the Texas state legislature. On review of Mr. Morse’s research, the attorneys conceded he had a powerful argument. But when Mr. Morse asked if the failure to “enact” and “authenticate” half or more of Texas laws was done by accident or intent, his lawyer-friends refused to answer. This refusal implies the failure to “enact/authenticate” Texas laws is intentional — after all, if the failure was due to some bureaucratic idiocy, why not admit it, joke about it, etc.? (“Ahh, that Secretary of State is so dumb, he wears loafers cuz he can’t even remember how to tie his shoes.”)

Constitutionalists have long suspected that there are two “governments” in place in each of our states and also at the national level. The first government is the republic specified in the national and state constitutions composed of public servants, dedicated to the principle of “unalienable rights”,

and revered by most Americans. However, a second "government" is also postulated that is not a republic, but a corporation. This corporate-state allegedly presumes all citizens to be "corporate employees" (inferiors) subject to corporate administrative procedures rather than "judicial" (constitutional) law.

According to this theory of two "governments", the corporation has slowly usurped the place of the republic through various legal and linguistic deceptions. For example, under constitutional government, I live as a member of the sovereign People in a State called "Texas". But under corporate government, I live in the "STATE OF TEXAS" as a presumed corporate employee (or "human resource") without rights and subject to corporate administrative procedure. The two-government theory postulates that the "Governor of Texas" and the "Governor of the STATE OF TEXAS" is the same man wearing two hats (or "crowns", from the governor's point of view). Sometimes he functions in a constitutional sense, sometimes in a corporate sense. This job-duality is also presumed to extend to legislators and judges. Sometimes they act as constitutional public servants, sometimes as corporate executives and admin-

istrators. Sometimes they pass constitutional laws, sometimes they pass corporate laws.

I've yet to see absolute proof of the two-government hypothesis, but there is considerable circumstantial evidence to suggest the hypothesis may be correct. For example, Mr. Morse's peculiar conversation with the legislature's lawyers might be interpreted as evidence of two "governments". I.e., those laws that are "enacted" and "authenticated", are clearly true, constitutional laws binding on all Americans. But those "un-enacted" and/or "un-authenticated" laws may be mere corporate rules binding only on members of the corporation (government employees).

It's an intriguing theory, but a long way from proven. Until such proof is provided, the following argument should only be viewed as a possible challenge to a law's constitutionality — not as a challenge to the constitutionality of government itself.

Further, Mr. Morse suspects that once you plead to any court, you have not only conceded jurisdiction, you have accepted the validity of whatever "law" by which you were charged — even if it's unconstitutional. Therefore, Mr. Morse applies this "enactment" strategy in a pre-plea environment as a habeas corpus .

CASE NUMBER: 637368

EX PARTE

Dale Thomas, Morse Applicant

IN THE COUNTY CRIMINAL COURT NUMBER 9 OF TARRANT COUNTY TEXAS

TO THE HONORABLE BRENT A. CARR:

APPLICATION PRE-PLEA FOR PRE-TRIAL WRIT OF HABEAS CORPUS

COMES NOW, the Applicant, Dale Thomas, Morse, Pro Se, and pursuant to the Texas Code of Criminal Procedure, Articles 11.01, 1105, 1122 and 11.23, and Article 1, Sections 10, 12 and 19, and Article 5, Section 16 of the Texas Constitution, and the Fourteenth Amendment to the United States Constitution, hereby files this Application for Pre-Plea, Pre-Trial Writ of Habeas Corpus, in that Applicant is being illegally restrained in his liberty in violation of the Constitution and Laws of this State and of the United States, and will respectfully show the following:

I.

Applicant seeks the writ petitioned for herein due to the fact that Applicant is illegally restrained in his liberty, by be-



ing held on a Five Hundred (\$500.00) Dollar Bond. (Tex. Crim. App. 1982, panel op.).

Applicant is charged with first offense misdemeanor Driving While Intoxicated (DWI). Applicant challenges the validity and existence of the statute, Article 49.04 of the Texas Penal Code which is charging Applicant with DWI. More specifically 49.04, is void on its face because the Texas Constitution Article 4, Section 21, states:

"[The Secretary of State] shall authenticate the publication of the laws, and keep a fair register of all official acts..."

The Vernon's Texas Penal Code is published in three volumes, and does not contain authentication from the office of the Secretary of State as shown in Exhibit "A". This certification is indiscriminately found throughout the Publication of Vernon's Texas Statutes, but is not found in the Texas Penal Code. The absence of this certification renders the Chapters, Articles and subsections, etc. of the Vernon's Texas Penal Code, in their entirety, void.

Applicant further contends that since the Penal Code under which he is charged, that being Article 49.04 and the definitions in Article 49.01, is void on its face, the jurisdiction of this Court to prosecute Applicant fails.

Under the Fair Notice Doctrine as set forth in *United States v. Nevers*, 7 F.3d 59 (5th Cir. 1993), to prosecute Applicant for the conduct alleged under an invalid law, and by an information herein, would be denial of due process.

For these reasons, Applicant requests the Writ of Habeas Corpus issue and discharge Applicant forthwith.

II.

Since the Vernon's Texas Penal Code, Article 49.04 is not

a valid publication of the law, by its failure to contain a certification from the Secretary of State, it could not pass the "Fair Notice Test" provided in *United States v. Nevers*, supra, and of the due process clause of both State and Federal Constitutions.

Article 1, Section 10 of the Texas Constitution and the Sixth Amendment to the United States constitution, further give Applicant the right to know the nature and the cause of the accusation against him, and to have a copy thereof. The failure of the misdemeanor information, to charge Applicant under a valid law, violates Article 1, Section 10 of the Texas Constitution, the Sixth Amendment to the United States constitution, and the due process clause of both Federal and State Constitutions.

To be a law in compliance with the Constitution of this State, the law must show its authority "on its face" and be "certified" as law by the Secretary of State. To be in compliance with the Texas Constitution, the publication of law must have 1.) an enacting clause in compliance with Article 3, Section 29 of the Texas Constitution which is mandatory, not directory.

Article 3, Section 29 of the Texas Constitution states:

Sec. 29. ENACTING CLAUSE OF ALL LAWS. The enacting clause of *all laws* shall be: "Be it enacted by the Legislature of the State of Texas".

In this instant case, Volume 1 through 3 of the Texas Penal Code Titles have the enacting clause "on its face", published in each volume on page XLI. However, all three Volumes of Vernon's Texas Penal Code are "without" a published certification by the Secretary of State. Therefore, the Vernon's

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Texas Penal Code has not been "authenticated" as law of this state, and in compliance with Article 4, Section 21 of the Texas Constitution.

2.) Pursuant to Article 4, Section 21 of the Texas Constitution which states in part:

"There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall *authenticate* the publication of the laws [emphasis supplied], and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law"

A copy of the typical Certification found in some of

Vernon's Texas Statutes is attached hereto and marked Exhibit "A". Applicant further asserts, "*authentication*" by the Secretary is also constitutionally mandatory and is not directory.

In this instant case, the Vernon's Texas Penal Code is "absent" of the certification from the Secretary of State, and therefore, fails to show Applicant its authority as law, "on its face" as being the authentic law of the State of Texas, and further violates the due process clause of both Federal and State Constitutions, by its *failure* to give notice of its authenticity *on its face*. See *Cunningham v. Great Southern Life Ins. Co.*, 66 S.W.2d 765, 773 (Tex Civ. App.).

Chapter 49 of the Texas Penal Code cannot be presumed to be law, in that it has not been authenticated by the Secretary of State as set out in Article 4, Section 21 of the Texas Con-

stitution, and therefore, has not been promulgated. There is a fundamental Maxim of Law that "A law is not obligatory unless it is promulgated". See *Blacks Law Dictionary*, 2nd edition, pg. 826. An Act of the Legislature is not even regarded as a law unless it be made publicly known; by the proper public authority, and in this State, that is the Secretary of State along with reference to the Statutes' enacting authority. However, in this case the law as published in the Vernon's Texas Penal Code books has not been properly or lawfully promulgated due to the fact that it is void of "*authentication*" from the Secretary of State as set out above, and as per Article 4, Section 21 of the Texas Constitution.

Moreover, the pocket parts in the rear of all three volumes of the Penal Code, which update and amend certain sections thereto are without both the published enacting clause pursuant to Article 3, Section 29 of the Texas Constitution, and the Secretary of State's authentication as required by Article 4, Section 21 of the Texas Constitution. Since the Penal Code, more specifically, Chapter 49, fails to show its authority and authenticity on its *face*, is Applicant and the general public required to follow it? Applicant contends no!

No law shall be revived or amended by reference to its title, but that act revived or section or sections amended must be re-enacted and published at length. See *Ellison et al. v. Texas Liquor Control Board et al.*, 154 S.W.2d 322 (Galveston 1941).

As to *Ellison*, supra, all of the update pocket parts in the rear of all of Vernon's Texas Statutes, not just the Penal Code, are absent of both the "enacting clause" and the "authentication" from the Secretary of State.

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Additionally, without a law, the Court is without jurisdiction to sit in judgment of Applicant. A proposed law which has not been authenticated by the Secretary of State is not a valid publication of law that Applicant, or for that matter, the people of the state would be required to follow, because of its failure to show its authority "on its face" that it is the "authentic" law of this state. Furthermore, Applicant along with all the people of the State of Texas, cannot be required to search the acts of the Legislature or the session laws to know it is the law, by being properly "enacted" as per Article 3, Section 29 of the Texas Constitution, and properly "authenticated" by the Secretary of State in compliance with Article 4, Section 21 of the Texas Constitution. As to the pocket parts which update and amend the law, there is *no published enacting clause, and no certification from the Secretary of State in any of these instruments*. Therefore, any changes or updates in the Penal Code contained in the pocket parts are not valid publications of the law of this State. Based on the above, the charging instrument before this Court fails to create a cause of action, leaving the Court without jurisdiction.

III.

The Texas Constitution, Article 3, Section 43, REVISION OF LAWS, provides:

"(a) The Legislature shall provide for revising, digesting and *publishing* the laws, civil and criminal; . . ."

Based on the above, the Legislature is responsible for publishing the laws of this State. Due to the fact that the Penal Code was published without the "authentication" from the Secretary of State as per Article 4,

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Section 21 of the Texas Constitution, the Penal Code in its entirety is not a valid publication of law, and therefore, Applicant cannot be forced to obey it, nor does the Court have jurisdiction to proceed with this prosecution.

The Court of Criminal Appeals stated: ". . . Where the court is without jurisdiction it has no authority to render any judgment other than one of dismissal." See *Garcia v. Dial*, 596 S.W.2d 525, 528 (Tex. Crim. App. 1980).

Applicant refers the Court to Vernon's Texas Code of Criminal Procedure Volume 1. Note the authentication from the Secretary of State appears on page XLI, and the enacting clause on page XLII. Applicant further refers the Court to Vernon's Texas Natural Resources Code Volume 1. Note the authentication appears on page XLIII, and the enacting clause on page XLIV. Applicant further asserts that the above CCP and Natural Resources Code of Vernon's Statutes have been properly enacted and authenticated as law, because they contain both the enacting clause and authentication to comply with the Texas Constitution as set out above. Accordingly, Applicant would further show the Court, for reference only, that other Vernon's Texas Statutes are not law. Applicant also refers the Court to

Vernon's Texas Civil Statutes, Volumes 1 - 23, and Exhibit "A" attached hereto. All of these Volumes of Vernon's Texas Civil Statutes are without the enacting clause, all in non-compliance with Article 3, Section 29 of the Texas Constitution. In further referring the Court to Exhibit "A", nowhere in said certification does the Secretary of State use the language the laws certified therein were properly enacted by the Legislature, or for that matter even enacted at all. The certification uses the language "adopted", **not** "enacted". Nowhere is the word "enacted" used in the certification. Therefore, without both the published certification from the Secretary of State, and the published enacting clause, these civil statutes are not of themselves, valid publications of law that the general public must obey.

The above raised issues are further ambiguous and confusing to Applicant and the general public, in that some of Vernon's Statutes such as the Code of Criminal Procedure and the Natural Resources Code have been properly *enacted* in compliance with Article 3, Section 29 of the Texas Constitution, and properly authenticated by the Secretary of the State, in compliance with Article 4, Section 21 of the Texas Constitution. Furthermore, and adding to this confusion and ambiguity,

some of the other Vernon's Texas Statutes contain just the enacting clause and no certification, or vice versa. For example, the Vernon's Texas Agriculture Code has the enacting clause in Volume 1 on page LXVII, but contains no authentication from the Secretary of State. Volume 2 of the Agriculture Code, contains the Certification from the Secretary of State on page LV, but no enacting clause, further adding to the confusion and ambiguity. Applicant further requests that the Court take Judicial Notice under Rule 201, that all of the published Court cases in this state refer to Vernon's Texas Statutes, what ever the subject matter of the issue may be. The Courts of this state have thus acquiesced to the fact that Vernons are the statutes and laws of the state. Applicant was unable to locate any applicable Texas citations, however, for reference, cites the following:

The purpose of provisions of this character [enacting clauses] is that all statutes may bare upon their face a declaration of the sovereign authority by which they are enacted and declared to be the law, and to promote and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe the statute with certain dignity, believed in all times to command respect and aid in the enforcement of laws. See *State v. Burrow*, 104 S.W. 526, 529 (1907).

If an enacting clause is useful and important, if it is desirable that laws shall have upon their face the authority by which they are enacted, so that the people who are to obey them, need not search legislative and other records to ascertain the authority, then it is not beneath the dignity of the framers of a constitution, or unworthy of such an instrument to

prescribe a uniform style for such enacting clause. See *Sjoberg v. Security Savings & Loan*, 75 N.W. 1116 (Minn. 1898). In this case, the law was published in the statute book without the enacting clause and was thus challenged as being unconstitutional.

The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity.*** The purpose of an enacting clause is to establish the act; to give it permanence, uniformity and certainty; to afford evidence of its legislative statutory nature, and thus prevent inadvertence, possible mistake, and fraud. See *Joiner v. State*, 155 S.E.2d 8, 10 (1967).

Applicant further contends that since the Penal Code is without "authentication" from the Secretary of State, it is not law that Applicant can be obliged to obey.

IV.

The Legislature as a body representing the people of this State when enacting the Penal Code, breached a fiduciary duty to the people and violated Article 3, Section 36 and encroached upon Article 4, Section 21 of the Texas Constitution, by having the Penal Code published (by contract?) in Vernon's, without being "authenticated" by the Secretary of State, to be in compliance with Article 4, Section 21 of the Texas Constitution. Since the Legislature had the Penal Code published without "authentication" from the Secretary of State, the Legislature encroached upon a duty specifically and Constitutionally delegated to the Secretary of State who is a member of the Executive Branch of the Government. Therefore, the Penal Code is not a valid publication of law, and

further unconstitutional in its entirety, in that the Legislature had the Code published without said "authentication" above, all in violation of Article 2, Section 1 of the Texas Constitution. (i.e. The Separation of Powers Doctrine). Since the Legislature encroached on the Executive Branch of the government, the Vernon's Texas Penal Code is unconstitutional law, because the Secretary of State has not certified its validity pursuant to Article 4, Section 21 of the Texas Constitution. For these reasons, Applicant is entitled to have this case dismissed "with prejudice" and is entitled to his discharge.

CONCLUSION

The information charging Applicant in this instant case is defective, because it fails to charge a crime under a validly published law as set forth in the Texas Constitution, and Vernon's Texas Penal Code. The law was published in Vernon's Texas Penal Code without "authentication" from the Secretary of State as set out in Article 4, Section 21 of the Texas Constitution. Therefore, the information brought under 49.04 of the Texas Penal Code, fails to state a claim on which relief can be granted.

Since the Legislature is responsible for "revising, digesting and publishing" the laws as per Article 3, Section 43 of the Texas Constitution, and the Penal Code as Published in Vernon's was published without the certification from the Secretary of State as per Article 4, Section 21 of the Texas Constitution, the Penal Code was published by the Legislature in violation of the Separation of Powers Doctrine in violation of Article 2, Section 1 of the Texas Constitution, making the Penal Code unconstitutional "on its face".

Pursuant to *Attorney v. United States*, 52 L.Ed.2d 651(1977), Applicant further asserts that based on the above, he has a right under Article 1, Section 10 of the Texas Constitution and the Sixth Amendment to the United States Constitution, to not be brought to trial until the issues raised herein, are completely disposed of and all appellate remedies have been exhausted.

PRAYER FOR RELIEF

WHEREFORE, premises considered, Applicant respectfully moves this Court to issue the Writ of Habeas Corpus petitioned for herein, and ex parte for the reasons set forth above. Applicant further moves the Court to thereafter dismiss this cause of action, and discharge Applicant. Or in the alternative, set a time certain for hearing, and order the Attorney for the

State to come forth and show cause why the writ petitioned for herein should not issue, or to grant Applicant such other and further relief as to which Applicant may be justly entitled.

Respectfully submitted,

s/ Dale Thomas, Morse
Acting Pro Se
[Address], Fort Worth, Texas
[zip]
[phone & fax numbers]

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the _____ day of April, 1997 a true and correct copy of the above and foregoing Application for Writ of Habeas Corpus has been served on the Tarrant County District Attorney, by hand delivery to his office.

s/ Dale Thomas, Morse

VERIFICATION

I, Dale Thomas Morse, under the penalties of perjury, declare and affirm that the facts stated herein are true and correct to the best of my knowledge and belief

s/ Dale Thomas, Morse

As previously noted, Mr. Morse believes that this Habeas Corpus strategy might work only if it's used "pre-plea". However, insofar as jurisdiction can be challenged at any time (even after the trial), it may be possible to use variations on the "enactment" and "authentication" arguments to challenge and perhaps disprove jurisdiction even after a court has rendered a verdict. These arguments might even provide a foundation for charging one or more "government" officials with fraud.



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