

# Chasin' Away the Blues: Texas Sunday Legislation

By Russell Folk and Heather Coons

What are you planning to do this Sunday? Go to church? Go to a movie? Do a little shopping at a mall?

At one time, all but going to church would have been illegal, and, as few as 25 years ago, punishable by up to six months in jail and/or a \$500 fine for violating Texas legislation on Sunday activities, known as "blue laws."

The origin of the term "blue law" is somewhat controversial. Professor David J. Hanson explained in his Internet article on the subject that there is no evidence to support the claim that the laws were originally printed on blue paper, thus the name. He wrote that the term "blue" was a derogatory way of describing those of "rigid moral codes" during the 18th century, but Sunday legislation has been around a lot longer than that.

The book *Critical History of Sunday Legislation from 321 to 1888* by Abram Herbert Lewis stated that the first Sunday law was enacted by the Roman emperor Constantine in 321 A.D. He ordered the "venerable day of the sun" to be a day of rest for those in cities, without placing restrictions on agriculture.

Britain continued with the practice of Sunday laws after the fall of the Roman Empire, and in 1676, Charles II adopted stricter laws that would later become the basis of laws in America.

The first Sunday legislation in America was enacted in 1617 by the London Company for Virginia, which forced colonists to attend church services. Blue laws in early colonial days prohibited work, household chores, kissing, sex and even having a baby. Punishments included loss of provisions, whipping, public placement in stocks or fines of one to 50 pounds of tobacco. A third offense was punishable by death.

Although blue laws directly violated the Constitution and the Bill of Rights once America gained her independence in 1776, the laws were upheld in the United States Supreme Court in 1885. In *Soon Hing v. Crowley*, the court ruled that a state had a "right to protect all persons from physical and moral debasement, which comes from uninterrupted labor."

Sunday laws were slow in coming to the Lone Star state. Until 1836 and Texas' fight for independence from Mexico, Roman Catholicism was the area's established religion. After the Battle of San Jacinto, Protestant missionaries came to Texas in droves, citing vast distances, few teachers and a failure to observe the Sabbath as the causes for backslidden souls.

The first Sunday law in Texas was a city ordinance passed by Houston in 1839. In response to the city's many saloons and the resulting drunk and disorderly conduct, the new ordinance prohibited the sale of malt liquor on Sundays.

The Texas State Legislature debated Sunday legislation from the beginning. In 1853, Sen. Sam

Houston gave an address in which he staunchly opposed blue laws and prohibition. However, in 1867, the Texas Supreme Court upheld the ordinance in *Gabel v. City of Houston*, stating that cities had a right to promote "good order and tranquility."

In his book *Texas Blue Laws*, William Harper wrote that the first state law, titled "An Act to Punish Certain Offenses Committed on Sunday," was passed Dec. 16, 1863, by the 10th State Legislature. The bill was in two parts. First, it made it a misdemeanor to "compel a slave, child or apprentice" to work on Sunday, while exempting household duties, charity work, and whatever may be "needed to save a crop." The second part targeted

In *Turning Points in El Paso, Texas*, Leon Metz wrote that moralist reformers demanded Sheriff J. H. Boone force saloons, prostitutes and gamblers to abide by Sunday blue laws. In response, Sheriff Boone stated that he was "going to reform the reformers, too." On Nov. 19, Boone shut down the city by closing everything from grocery stores to gambling houses; even ASARCO employees were arrested. On the next Sunday, almost 5,000 people crossed the border into Mexico, with signs on the doors of businesses stating, "We are spending our money in Juárez."

Prohibition helped reformers, and soon their attention turned from intoxicating liquors to Sunday movies, baseball games, concerts and amusement parks. State courts ruled that amusements which charged a fee on Sundays were in violation of blue laws.

In 1961, the U.S. Supreme Court revisited blue laws for the first time since the turn of the century. Speaking for the court, Chief Justice Warren stated that Sunday laws did not violate the First Amendment because "the air of the day is one of relaxation, rather than religion."

But Justice Douglas gave a dissenting view. He questioned the authority of a state to make "protesting citizens refrain from doing innocent acts ... because the doing of those acts ... offends their Christian neighbors."

With blue laws a hot topic in the courts, state legislatures soon found themselves immersed in the debate, and Texas was no different. Texas Sen. William T. Moore introduced a new bill in an attempt to modernize blue laws. After numerous debates and amendments, Senate Bill No. 35 passed the House in 1961.

The updated law banned 42 types of items from being sold on consecutive Saturdays and Sundays. Enacted because of the rising popularity of discount stores, this law prohibited the sale of automobiles, clothing, appliances,

kitchenware, linens, toys and baby products, to name a few. Items exempted included food, newspapers, ice, sporting goods and beer.

On Nov. 15, 1961, an *El Paso Times* editorial said, "We think the whole law is stupid." Most consumers agreed. In another article, El Paso grocery store manager Jim Gunn stated, "A lot of customers think it is the most asinine law on the books." Gunn also revealed that some customers became quite belligerent when denied goods.

Local merchants' opinions differed. The *El Paso Times* reported that Silva Super Market manager Joe Silva Jr. felt the blue laws impeded business. Not only did stores lose potential sales to Juárez, but employees had to be trained and signs posted for Sunday shoppers.

Herbert Schwartz, then-president of the Popular Department Stores, head of the Downtown



Car dealerships are still required to operate under Texas Blue Laws. (Photo by Heather Coons)

certain recreations. It became a misdemeanor to participate in a horse race or a shooting match, sell liquor, or operate a bowling alley or a billiards parlor.

During Reconstruction, A. J. Hamilton became the provisional governor of Texas, and all laws not in conflict with the United States were declared valid. As a result, Sunday laws were neither repealed nor amended, but in 1866 for the first time, exemptions were made for those whose Sabbath was not on Sunday.

The Texas Reconstruction Convention of 1868 repealed the state's blue laws, but that was overturned by the 12th State Legislature in 1871. The new Sunday law had basically the same provisions as the previous one, but it prohibited sales between 9 a.m. and 4 p.m., except for medicine and drugs. Most of the early charges for violating blue laws were against saloon keepers and merchants.

In El Paso, early blue laws were pretty much ignored and business went on as usual until 1904.

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Development Association and director of the Texas Retailers Association, disagreed.

In Schwartz's opinion, a seven-day retail week would increase business costs without increasing sales because the number of shoppers would remain fairly constant. Not only would that lead to rising inflation and energy usage, Schwartz stated, but small business owners would be the most affected because of a lack of resources, such as a smaller number of employees to work more hours.

One thing was certain: Texas blue laws were confusing. In an *El Paso Times* article titled "Texas' Blue Law: What Can You Buy Sunday?" district attorneys from 31 counties were contacted for assistance in interpreting the law. Ten replied, all with conflicting answers.

Because the law was so difficult to decipher, it made enforcement almost impossible for local agencies. Investigations and policing came from the most unlikely sources: fellow merchants.

Here in El Paso, enforcement was financially backed by the Downtown Development Association (DDA). The DDA hired private investigators and attorneys to ensure compliance with Sunday legislation. Violators were contacted in writing, requesting compliance. If that failed, a civil injunction would be filed.

Several major court cases resulted from injunctions against El Paso's rebellious retailers. The owners of Malooly's Furniture Store, Gibson's Discount Stores, Michelle's Clothing, K-Mart and several automobile dealerships, as well as many others, found themselves before a judge.

In 1971, a civil court injunction was requested by the DDA against George and Eddy Malooly, owners of Malooly's Furniture Store, for selling prohibited items on consecutive Saturdays and Sundays.

"We are only trying to serve the people," the Malooly brothers stated in an article published in the *El Paso Herald-Post* on Dec. 4. "Many, many people have called us from outlying areas, saying they are unable to travel so far during the week."

Judge Hans Brockmoller, 120th District Court, granted the injunction, which barred any Sunday openings by Malooly's Furniture, according to an *El Paso Times* article on Dec. 17. The Maloolys did not file an appeal.

The DDA also requested a civil court injunction against Gibson's Discount Stores, with criminal charges pending. Brockmoller issued the injunction, and Gibson's appealed. In 1973, the appeal was denied, and Gibson's took the case to the Texas Supreme Court, which upheld the state's blue law in a 5-4 decision against Gibson's.

Justice Thomas M. Reavley stated that it was the court's opinion that blue laws were a legislative question, not a constitutional one. Justice Ross E. Doughty disagreed, questioning the legislature's right to prohibit the sale of certain merchandise one day a weekend.

Gibson's continued the fight all the way to the U.S. Supreme Court. In 1978 the case was dismissed due to failure to apply within a proper time frame.

In another case, Mickey Robbins, owner of Michelle's Corp., a clothing store, was held in contempt of court for violating an injunction requested by the El Paso Retailers Association. H.W. Freeman reported in the *El Paso Times* on Sept. 13, 1981, that Robbins felt he was not in violation of the law due to the law's "charity clause." Twenty-six percent of Sunday sales went

to the El Paso Rehabilitation Center where his daughter, Michelle, was being treated for cerebral palsy.

Opponents of the blue law had about as much luck with the state's legislature over the years as they had with judges. State Rep. Paul Moreno described the law in a 1971 *El Paso Times* article as "antiquated and wholly inadequate," but early repeal attempts, such as the one he introduced, regularly failed. On Feb. 12, 1975, Rep. John Hoestenbach announced a new effort at repeal. However, the bill was not even voted out of the House Business and Industry Committee.

The next major attempt to repeal blue laws was led by El Paso Rep. Robert (Bobby) Valles in 1979. Supported by Gov. Bill Clements, Valles' bill would have offered repeal on a local basis, so the will of the people could decide. Valles believed this distinction gave the bill a good chance of passage. Tri-State Associated Grocers Inc., representing 130 independent grocers, joined the fight. In an effort to get consumer feedback to the legislature, hundreds of leaflets and letters were passed out by El Paso grocers. Sam Stewart, Valles' administrative assistant, declared the bill dead on May 5. Ken Bridges, spokesman for Tri-State, vowed not to quit. "It'll come up again, no doubt about it."

The fight finally ended in June 1985. Texans For Blue Law Repeal, Inc., a group of retailers, headed up a strategy and lobbying campaign. The Texas legislative session ended with an indigent health care plan, seatbelt laws, increased arts financing – and repealed blue laws.

Today, remnants of Sunday legislation can still be seen in auto sales. Laws imposed by the Texas Department of Transportation require dealerships to close either Saturday or Sunday. The sales manager of a local automobile dealership told Russell Folk that because an automobile is such a large investment, most customers shop around for days before purchasing, so being closed one day doesn't affect business. When asked if he would open on Sundays if the law was repealed, he replied, "I don't think so ... people get tired, even the building gets tired."

Since 1863, weekends in Texas have been influenced by Sunday legislation, in one form or another. Liquor stores are still closed on Sunday. At other stores only beer and wine may be sold but only after noon. And on Christmas day, hard liquor cannot be purchased except at restaurants. But Texans and most Americans can buy almost anything else on Sunday, as most blue laws have been repealed across the country. ♀

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among heirs and sold. By 1895, with competition from the railroads, *El Molino* went out of business. The millstones were sold and shipped to Mexico, the wheel taken to a ranch in Cloudcroft.

Several members of the Hart family lived in the family home after Simeon and Jesusita died, including their bachelor son Juan, who built a large monument on the grounds in 1913 to honor his father. It was believed that Simeon Hart was buried under the tomb. The bodies of Juan Hart and his sister Pauline Hart Davis were removed from the monument in 1936 and taken to El Paso's Evergreen Cemetery. The monument itself was destroyed in the early 1950s to build Paisano Drive. No one knows exactly where the elder Harts are buried. Three other bodies were excavated close to the tomb, but none has been positively identified as Simeon or Jesusita.

Reputedly haunted and with a story all its own, the Hart mansion, best known to locals since 1940 as the Hacienda Café, stands empty in 2010, awaiting another owner. For more than 50 years the café welcomed natives and tourists alike to its historical rooms, serving food and drink in the shadow of the first industry of El Paso: Hart's Mill. ♀

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by the Virgin Mary. They believed all the healings and stress built up throughout her life finally took its toll. Hundreds of people attended her funeral at Shannon Hill Catholic Cemetery, where she was buried next to her father.

Moving from one country to another, then state to state and city to city, Teresa Urrea left a permanent imprint in the minds and hearts of all the people she healed and supported. Urrea's spiritual guidance is still called upon during the harshest and most desperate times. In El Paso's *Segundo Barrio*, many people are praying and hoping Teresa Urrea's spirit is with them. Parts of this historic community are in danger of being demolished to build a "downtown district" which could include one or more "big box" stores. The building Teresa lived in happens to be part of this section in the *Segundo Barrio*.

As she did in the past, Teresa Urrea continues to unite people of all races and classes. Many of *Segundo's* residents have come together to form *Colectivo Rezizte*, a group protesting against the politicians and business owners involved with the plans to destroy their community. With the help of the *Paso del sur* group and their faith in Santa Teresita, opponents of the use of eminent domain will continue to battle to preserve this part of El Paso's history and more importantly, the homes and lives of many. Although more than 100 years have passed since "La Santa de Cabora" physically graced our world, it is clear that she will long be a source of guidance and motivation for the poor and unrepresented. ♀

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In 1966, Goetting became only the third person in the United States to receive the National Margaret Sanger Award for her work in the birth control movement. In 1968, she received the Planned Parenthood Center of El Paso Leadership Award, the Presidential Award in 1970, and the Paseña Valerosa Award in 1974. In 1977, Goetting was recognized by the El Paso Women's Political Caucus as a Pioneer in Women's Rights. She received an honorary life membership from the El Paso Library Association in 1979. In 2009, she was named to the El Paso County Historical Society's Hall of Honor.

In a surprise move in July 2009, Planned Parenthood closed six facilities in El Paso because of financial problems. According to the *El Paso Times*, more than 12,000 patients were forced to look for alternate care.

Kathleen Staudt, a political science professor at the University of Texas at El Paso, told the *El Paso Times* that she was shocked. "How could the 21st largest city in the United States – El Paso – not have Planned Parenthood clinics?"

While other providers attempt to fill the gap, Planned Parenthood in El Paso will be missed. It will take another organization, other individuals to carry on the work and pioneering spirit of Betty Mary Smith Goetting, who did so much to help El Paso women. ♀