

S500.6
R:63
1/2

FILE COPY

TEXAS REGISTER

ISSUED BY THE SECRETARY OF STATE

JAN 9 1976

TEXAS DOCUMENTS

Featured in This Issue...

Emergency Rules of State Department
of Public Welfare

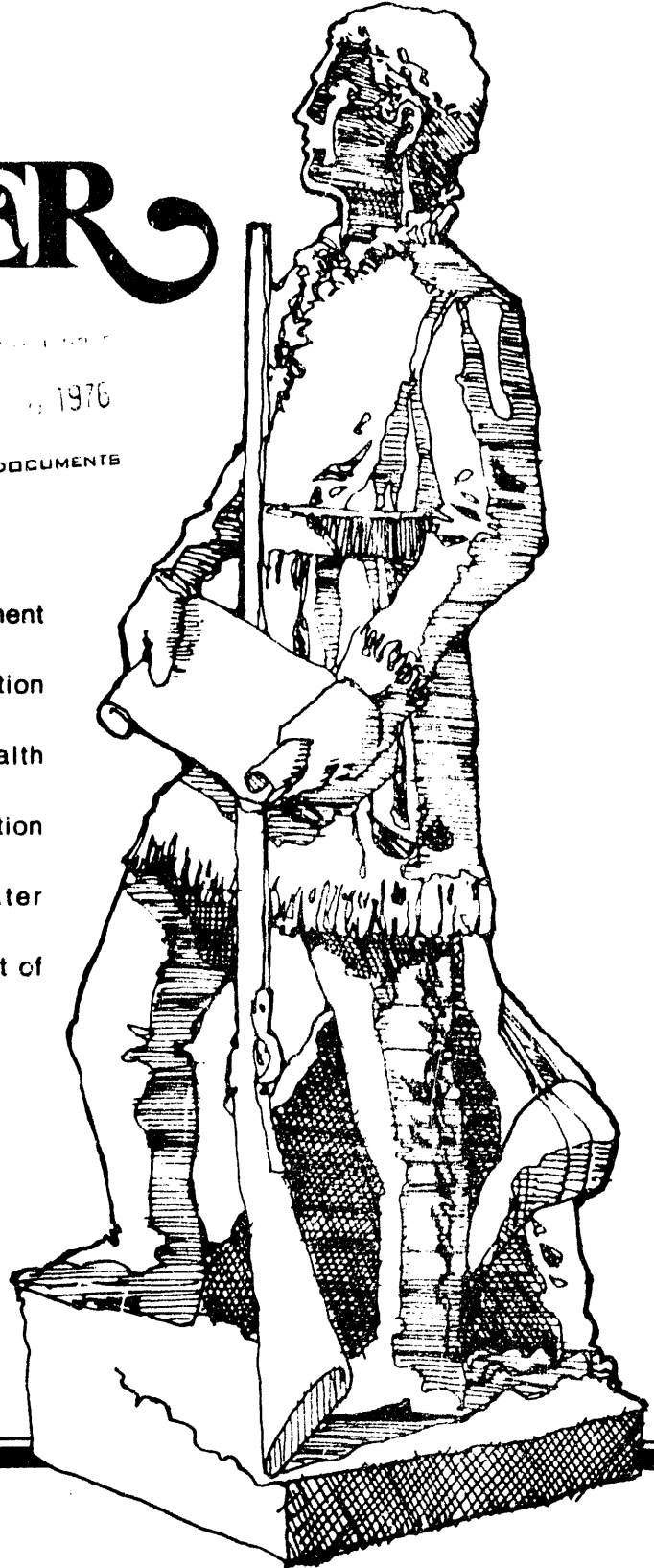
Emergency Rules of Texas Education
Agency

Emergency Rules of Texas Health
Facilities Commission

Proposed Rules of Texas Education
Agency

Proposed Rules of Texas Water
Quality Board

Adopted Rules of State Department of
Public Welfare



NOTES ON THE ISSUE

Of special note in this issue are the emergency rules issued by the Department of Public Welfare. These rules are promulgated under new legislation (Article 695a-3, Texas Civil Statutes) and deal with minimum standards for licensing child care facilities in Texas. The rules affect virtually all phases of the operation and maintenance of such facilities.

The length of DPW's emergency rules makes it impossible for us to carry the full text in the *Register*. Instead, we have included a brief summary with a list of the titles and numbers of the rule subcategories. Anyone wishing to review these documents may inspect copies on file here and at DPW. Copies of these rules may be obtained by writing or calling the Department of Public Welfare. It is our understanding that copies have already been sent to affected child care facilities.

The practice of summarizing the text of documents too lengthy to be included in the *Register* will be standard procedure. Information will be included with these summaries as to how the full text may be inspected or obtained.

One additional note: the cover design and illustrations appearing in the *Register* are the work of Austin artist Gary Thornton. Gary has our appreciation for his contribution to this publication.

William H. Lalla
Director, Texas Register Division

Cover illustration represents Elizabeth Ney's statue of Stephen F. Austin, which stands in the foyer of the State Capitol.

Artwork: Gary Thornton

TEXAS REGISTER

The *Texas Register* is published 100 times a year by the Texas Register Division, Office of the Secretary of State, Box 819, Texas Commodore Building, Austin, Texas 78701. Telephone (512) 475-7886.

The *Register* contains executive orders of the Governor, summaries of Attorney General's opinions and summaries of requests for opinions, emergency rules, proposed rules, and adopted rules of state agencies, notices of open meetings, and miscellaneous notices of general interest to the public of Texas.

Subscriptions, payable in advance, are \$25 (plus tax) for one year. Back issues, when available, are \$1 each (plus tax).

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person for any purpose whatsoever without permission of the Texas Register Division Director, provided no such republication shall bear the legend "*Texas Register*" or "Official" without the written permission of the Director, Texas Register Division. Published under the authority granted in Article 6252-13a, Texas Civil Statutes.



Mark White
Secretary of State

Texas Register Division

William H. Lalla, Director	Anne Fitzpatrick	Angie Montoya
Tommy Denton	Mary Barrow	Becky Willard
Kurt Johnson	Linda Camp	Brenda Wadsworth

CONTENTS

41

Emergency Rules

Texas Education Agency

- 42 *Hearings and Appeals Generally*
- 46 *Designation of a Board for the Texas School for the Blind*
- 47 *Hearings of Appeals to Commissioner*
- 49 *Appeals to State Board of Education*

Texas Health Facilities Commission

- 51 *Exemption Certificates and Declaratory Rulings THFC Emergency Rule and Regulation No. 3*
- 54 *Subscription Rates THFC Emergency Rule and Regulation No. 6*
- 55 *APA Requirements for Exemption Certificates and Declaratory Rulings THFC Emergency Rule and Regulation No. 8*
- 57 *Open Records Requirement--THFC Emergency Rule and Regulation No. 9*
- 58 *Administrative Procedure and Texas Register Act Requirements for THFC Emergency Rule and Regulation No. 10 Exemption Certificates and Declaratory Rulings--Correction of Errors*

State Department of Public Welfare

- 59 *Day Care Licensing*
- 60 *24-Hour Care Licensing*

Proposed Rules

Texas Education Agency

- 61 *The School Year*
- 61 *Hearings and Appeals Generally*
- 65 *Hearings of Appeals to Commissioner*
- 68 *Hearings and Appeals*
- 69 *Official Advisory Groups and Procedures for Appointment*
- 70 *Designation of a Board for the Texas School for the Blind*

Texas Water Quality Board

- 70 *Private Sewage Facility Regulations--Lake Bob Sandlin*
- 74 *Private Sewage Facility Regulations--Guadalupe River*

Adopted Rules

State Department of Public Welfare

- 78 *Food Stamps*

Open Meetings

Texas Advisory Commission on Intergovernmental Relations

- 79 *Meeting, January 9, 1976*

Board of Architectural Examiners

- 79 *Meeting, January 9-10, 1976*

Brazos River Authority

- 79 *Meeting, January 9, 1976*

Central Texas Council of Governments

- 80 *Meeting, January 14, 1976*

Coastal Bend Council of Governments

- 80 *Meeting, January 9, 1976*

Texas Board of Corrections

- 80 *Meeting, January 12, 1976*

Texas Education Agency

- 81 *Meeting, January 8-9, 1976*
- 81 *Meeting, January 10, 1976*

Governor's Office

- 82 *Meeting, January 8, 1976*

Texas Department of Health Resources

- 82 *Meeting, January 9, 1976*

Texas Historical Commission

- 82 *Meeting, January 9, 1976*

Texas Parks and Wildlife Department

- 82 *Meeting, January 13, 1976*

State Department of Public Welfare

- 83 *Meeting, January 10, 1976*

Railroad Commission of Texas

- 83 *Meeting, January 12, 1976*
- 83 *Hearing, January 15, 1976*

Tourist Development Agency

- 84 *Meeting, January 16, 1976*

Texas Water Quality Board

- 84 *Hearing, January 14, 1976*

Texas Water Rights Commission

- 84 *Hearing, January 9, 1976*
- 85 *Meeting, January 12, 1976*
- 85 *Hearing, January 20, 1976*

EMERGENCY RULES

Numbering System-- Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the category of rules to which the rule belongs. The third unit (two digits) indicates the subcategory of rules, if any, within the category. The fourth unit (three digits) indicates the individual rule.

Symbology for Rules Section-- Changes to existing material are indicated in *bold italics* [Brackets] indicate deletion of existing material.

Texas Education Agency

Hearings and Appeals Generally 226.71.01

Because the statute (Section 11.13, Texas Education Code) under which hearings have been conducted is replaced effective 12:01 a.m., January 1, 1976, by a new statute (Article 6252-13a, Texas Civil Statutes) and because of the various statutes which place upon the Commissioner of Education official responsibility for adjudicating appeals from decisions of local boards of education, some of these appeals are on matters of student discipline and may involve the student's civil rights under the constitution of the United States or the Texas constitution, and because matters concerning the licensure of teachers and other school personnel may be before the Commissioner, the revocation of a license is a property right and may be appealed through the courts and because several matters have been appealed to the Commissioner and hearing dates deferred until after January 1, 1976, when Article 6252-13a, Texas Civil Statutes, becomes effective in order to make it possible for all hearings and appeals to be conducted under the same rules.

Therefore, the Commissioner of Education is promulgating Emergency Rules 226.71.01.010 through 226.71.01.210, to become effective immediately at 12:01 a.m. on January 1, 1976, or upon filing with the Secretary of State, whichever is later.

These rules are promulgated under the authority of Article 6252-13a, Texas Civil Statutes.

.010. Nature of Hearings and Appeals. Persons having any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the Commissioner of Education, who after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved, but nothing con-

tained in this series shall deprive any party of any legal remedy.

These rules shall include, but not be limited to, appeals from the following actions:

- (a) Actions or decisions by a District Board of Trustees or Board of Education;
- (b) Actions or decisions by a County Superintendent;
- (c) Actions or decisions regarding cancellation of a Teacher Certificate;
- (d) Denial or revocation of a Proprietary School Certificate;
- (e) Recommendations made to the Commissioner by the Texas Professional Practices Commission.

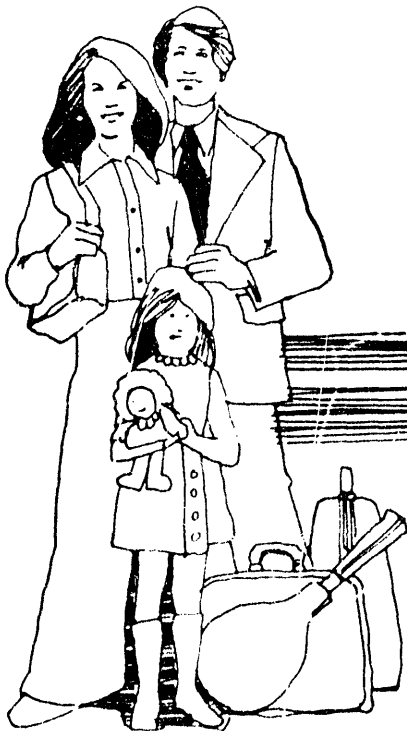
The decisions of the Commissioner of Education shall be subject to review by or appeal to the State Board of Education.

.020. Definitions: For Purposes of These Rules.

- (a) "Agency" means the Central Education Agency.
- (b) "Board" means the State Board of Education.
- (c) "Commissioner" means the State Commissioner of Education.
- (d) "Contested Case" means a proceeding in which the legal rights, duties or privileges of a party are to be determined by the Commissioner and/or the Board.
- (e) "Hearing Officer" means any person appointed by the Commissioner to conduct hearings on matters within the Agency's jurisdiction.
- (f) "Party" means the agency or a person who has appeared in a contested case or has filed timely notice of interest to appear, and who has not been dismissed or excluded by the Commissioner or Hearing Officer.
- (g) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the Agency.
- (h) "Pleading" means written allegations filed by a party requesting or opposing action by the Commissioner or the Board.
- (i) "Petitioner" means a party seeking review and/or action from the Commissioner or the Board.
- (j) "Respondent" means any party opposing the action sought by Petitioner from the Commissioner or the Board.
- (k) "Intervenor" means any party otherwise not defined.

.030. Object of Rules. The purpose of these rules is to provide for a simple and efficient system of procedure before the Agency to ensure uniform standards of practice and a fair and expeditious determination of causes. These rules shall be liberally construed with a view towards the purpose for which they were adopted.

.040. Scope of Rules. These rules shall govern the pro-



cedure for the institution, conduct and determination of all contested cases before the Agency. They shall not be construed so as to enlarge, diminish, or modify or alter the jurisdiction, powers or authority of the Agency or the substantive rights of any person.

.050. Ex Parte Consultations. Members or employees of the Agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate. In the disposition of *ex parte* matters that are required by law this rule does not apply.

.060. Filing of Documents. All petitions, motions, replies, answers, notices and other pleadings related to any proceeding pending or to be instituted before the Agency shall be filed with the Hearing Officer designated to preside in the case or, if no Hearing Officer be then designated, the Commissioner. They shall be deemed filed only when actually received by the designated Hearing Officer or the Commissioner (accompanied by the fee or deposit, if any, required by statute or Agency rules).

.070. Computing Time; Extensions.

(a) **Computing Time:** In computing any period of time governing hearing procedures which is prescribed or

allowed by these rules, the period shall begin on the day after the act or event in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

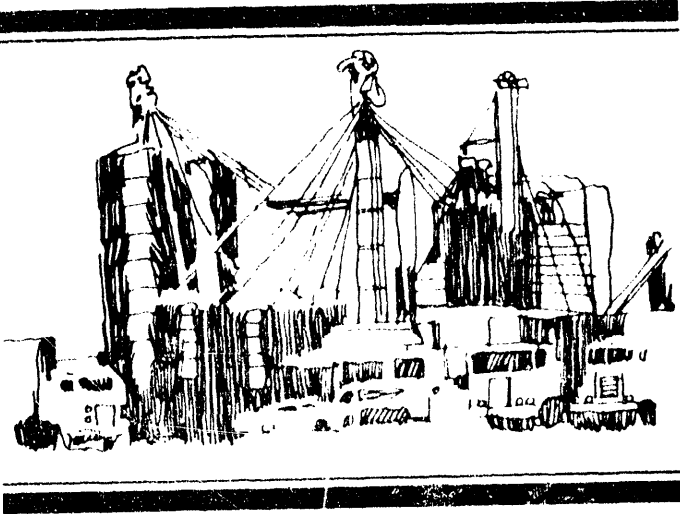
(b) **Extensions:** Unless otherwise provided by statute, the filing of any pleading may be extended by order of the Hearing Officer, upon written motion duly filed with him prior to the expiration of the applicable period of time for the filing of the same, showing there is good cause for such extension of time and that the need therefor is not caused by the neglect, indifference or lack of diligence of the movant. A copy of such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof. Any party may file written pleadings contesting a motion to extend, serving all other parties contemporaneously with the filing thereof.

.080. Agreements to be in Writing. No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any contested case shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify or stipulate any right or privilege afforded by these rules, unless precluded by law. No stipulation or agreement shall be enforced unless signed by the attorney of record, if any, for each party to the stipulation or agreement.



.090. Service of Pleadings.

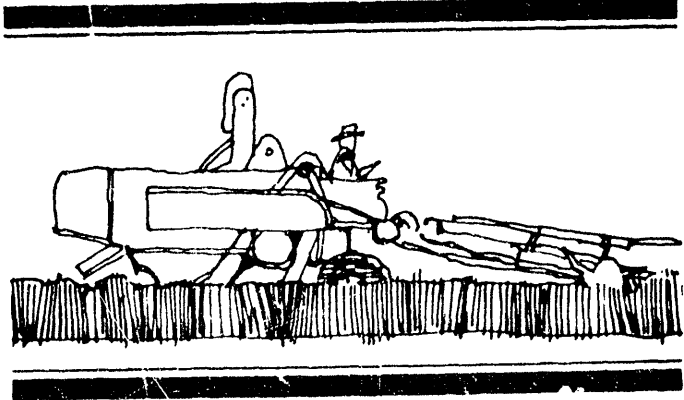
(a) Service of Pleadings: A copy of any protest, reply, answer, motion or other pleading filed by any party in any proceeding subsequent to the institution thereof shall be mailed by certified mail or otherwise delivered by the party filing the same to every other party or record. If any party has appeared in the proceeding by attorney or other representative authorized under these rules to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the Hearing Officer striking the protest, reply, answer, motion or other pleading from the record.



(b) Certificate of Service. A certificate by the party, attorney or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such evidence. The following form of certificate will be sufficient in this connection: 'I hereby certify that I have this _____ day of _____, 19____, served copies of the foregoing pleading upon all other parties of record to this proceeding, by (here state the manner of service). Signature'

.100. *Conduct and Decorum.* Every party, witness, attorney or other representative shall comport himself in all proceedings with proper dignity, courtesy and respect for the Agency, the Commissioner, the Hearing Officer, the Board, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of party shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

.110. *Classification of Parties.* Parties to proceedings before the Agency are petitioners, respondents and intervenors. Regardless of errors as to designations in their pleadings, the parties shall be accorded their true status in the proceeding.

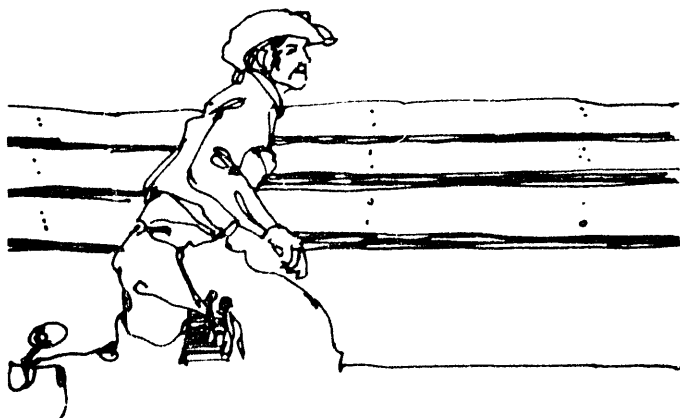


.120. *Parties in Interest.* Any party in interest may appear in any proceeding before the Agency. All appearances shall be subject to a motion to strike upon the showing that the party has no judiciable or administratively cognizable interest in the proceeding. Any person, public official, or Department of the State of Texas or any of its political subdivisions, or any civil or trade organization shall be permitted to intervene in support of or opposition to all or part of the relief sought in any contested proceeding by filing at least ten (10) days in advance of the hearing date, a petition in intervention showing its interest and the basis for its position in the case and at the hearing may present any relevant and proper testimony and evidence bearing upon the issues involved in the particular proceeding. In all proceedings the Agency is a party in interest.

.130. *Appearances.* Any party may appear and be represented by an attorney-at-law authorized to practice law before the Supreme Court of the State of Texas. Any person may appear on his own behalf, or by a *bona fide* full-time employee or by an elected or appointed officer of a governmental agency. A corporation, partnership or association may appear and be represented by any *bona fide* officer, partner or full-time employee. The Hearing Officer may require any person appearing in a representative capacity to provide such evidence of his authority as the Hearing Officer may deem necessary.

.140. *Classification of Pleadings.* Pleadings filed with the Agency in contested cases shall be petitions, answers, replies, exceptions, motions and notices of hearing. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

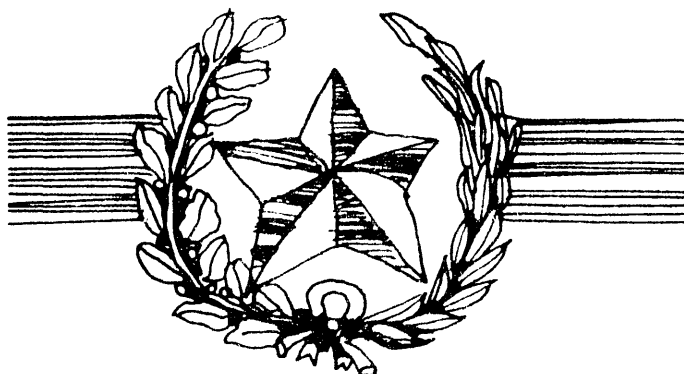
.150. *Form and Content of Pleadings.* Type-written or printed: All pleadings and briefs filed with the Department shall be written, type-written or printed upon paper 8 1/2 inches wide and 14 inches or 11 inches long with an inside margin of at least one inch wide and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided that all copies are clear and perma-



nently legible.

.160. Motions. Any motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefor. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be filed with the Hearing Officer who shall act upon the motion at the earliest practical time.

.170. Amendments. Amendments to any pleading offered within fourteen (14) days of the date set for the hearing or thereafter shall be permitted only after written consent of the Hearing Officer is obtained. Copies of all amendments, whenever filed, must be sent by the party offering the amendment to each party of record; and the Hearing Officer may, upon his own motion or the motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if the amendment materially alters the pleading on file.



.180. Incorporation by Reference of Agency Records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in those official files and records of the Agency which are public record. This rule shall not relieve any petitioner of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

.190. Prehearing Conference.

(a) In any proceeding, the Hearing Officer, on his own motion or the motion of a party or petitioner, may direct the parties, their attorneys or representatives to appear before him at a specific time and place for a conference prior to the hearing for the purpose of formulating issues and considering

- (1) the simplification of issues;
- (2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by any party of matters of public record, to the end of



avoiding the unnecessary introduction of proof;

- (3) the procedure at hearing;
- (4) the limitation, where possible, of the number of witnesses;

(5) such other matters as may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of such issues as in dispute.

(b) Action taken at the conference shall be recorded in an appropriate manner by the Hearing Officer, unless the parties enter into a written agreement approved by him.

.200. Motions for Continuance. Hearings may be continued on the Agency's own motion upon a motion for continuance filed by a party not less than five (5) days prior to the designated date that the matter is to be heard. The party moving for a continuance must do so in writing

and demonstrate good cause for the continuance. Copies of motions for continuance must be sent to all parties of record or their attorneys. In the event a continuance is ordered, the Hearing Officer shall promptly send notice of said continuance, such notice setting a new date for the hearing. The Hearing Officer need not hold a hearing on the motion for continuance. If a hearing cannot be held on the date for which it was set because a previously scheduled hearing is still in progress, no formal order for continuance shall be necessary. In such event the parties and Agency shall cooperate in holding the delayed hearing on the earliest possible date.

.210. *Place and Nature of Hearing.* All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the Commissioner shall designate another place of hearing in the interest of the public.

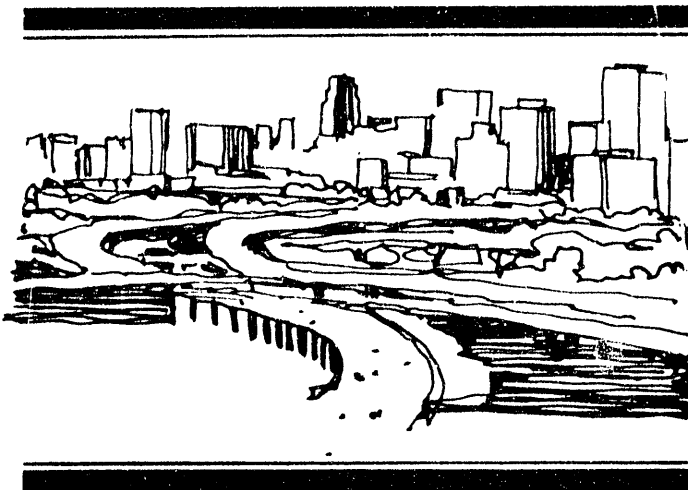
Issued in Austin, Texas, on December 31, 1975.

Doc. No. 760058 M. L. Brockette
 Commissioner
 Texas Education Agency

Effective Date: January 1, 1976

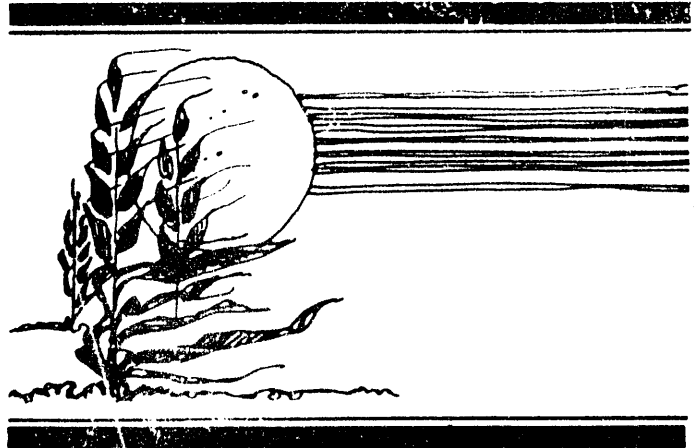
Expiration Date: April 29, 1976

For copies of this document, please call (512) 475-4123.



Designation of a Board for the Texas School for the Blind 226.91.04

Because the statute under which the State Board of Education has been acting as the local board for the Texas School for the Blind was amended by section 20 of H.B. 1673, acts of the Sixty-fourth Legislature, 1975, and because there were various legal questions concerning the implementation of H.B. 1673 which was submitted to the office of the



Attorney General for an official opinion and because he has issued Opinion Number H-739 and because the Texas School for the Blind is now without an official board under Texas statutes, therefore the Commissioner of Education is promulgating Emergency Rule 226.91.04.010 to become effective on January 10, 1976, or upon filing with the Secretary of State whichever is later.

This rule is promulgated under the authority of H.B. 1673, Acts of the Sixty-fourth Legislature, 1975.

.010. The State Board of Education shall designate from its membership a five-member board to serve in accordance with law as the Board of the Texas School for the Blind.

The first five members who volunteer publicly in a State Board of Education meeting to serve on the Board of the Texas School for the Blind shall be designated. Annual designation shall be at the January meeting of the State Board of Education. However, a vacancy on the Board of the Texas School for the Blind may be filled at any official meeting of the State Board of Education and when one of its members has appropriately volunteered to serve on the Board of the Texas School for the Blind.

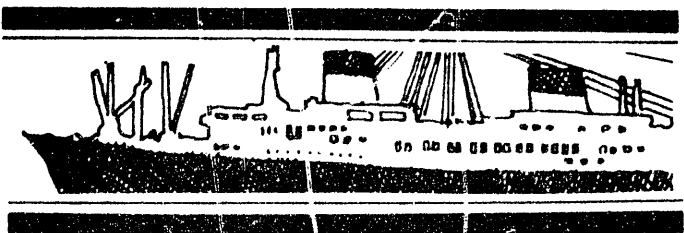
Issued in Austin, Texas, on December 31, 1975.

Doc. No. 760056 M. L. Brockette
 Commissioner
 Texas Education Agency

Effective Date: January 10, 1976

Expiration Date: May 8, 1976

For copies of this document, please call (512) 475-4123.



Hearings of Appeals to Commissioner 226.71.02

Because the statute (Section 11.13, Texas Education Code) under which hearings have been conducted is replaced effective 12:01 a.m., January 1, 1976, by a new statute (Article 6252-13a, Texas Civil Statutes) and because of the various statutes which place upon the Commissioner of Education official responsibility for adjudicating appeals from decisions of local boards of education, some of these appeals are on matters of student discipline and may involve the student's civil rights under the constitution of the United States or the Texas constitution, and because matters concerning the licensure of teachers and other school personnel may be before the Commissioner, the revocation of a license is a property right and may be appealed through the courts and because several matters have been appealed to the Commissioner and hearing dates deferred until after January 1, 1976, when Article 6252-13a, Texas Civil Statutes, becomes effective in order to make it possible for all hearings and appeals to be conducted under the same rules

Therefore, the Commissioner of Education is promulgating Emergency Rules 226.71.02.010 through 226.71.02.180, to become effective immediately at 12:01 a.m. on January 1, 1976, or upon filing with the Secretary of State, whichever is later.

These rules are promulgated under the authority of Article 6252-13a, Texas Civil Statutes

.010 Presiding Officer.

(a) Hearings will be conducted by a Hearing Officer who shall have the authority to administer oaths, to examine witnesses, to rule on motions, and to rule upon admissibility of evidence and amendments to pleadings. He shall have the authority to recess any hearing from day to day.

(b) If the presiding Hearing Officer dies, becomes disabled, or withdraws or is removed from employment from the case at any time before the final decision thereof, the Commissioner may appoint another presiding Hearing Officer who may perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case

.020. *Hearing Procedure.* The rules as set forth under 226.71.01.010 of these rules shall govern the method and manner of appeals made to the Commissioner.

.030. *Petition for Review.* The aggrieved party shall file with the appropriate officer a pleading in accordance with 226.71.01.060. The pleading shall identify the ruling action or failure to act complained of and a copy of the pleading shall be sent by the petitioner to that body whose ruling, action or failure to act is the subject of the appeal.

.040. *Notice and Hearing Date.* The Hearing Officer

shall cause notice to be given to the parties of the date and time of the hearing, which notice shall be given not more than thirty (30) days from the date on which the pleading is filed or within 30 days of the adoption of this rule, whichever is later.

.050. Order of Procedure.

(a) The petitioner shall present its case, the respondent or respondents shall next present its or their case and the petitioner shall then present its case in rebuttal. In those cases where there is more than one petitioner, the petitioner whose pleading was deemed officially filed first shall present its case and the petitioners next in line shall then proceed with the respondent or respondents next preceding and the petitioners presenting their case in rebuttal in the same order as their case in chief

(b) The parties may be allowed, in the discretion of the Hearing Officer, to make opening and/or closing statements with the petitioner or petitioners going first.

(c) In any case where a party is represented by more than one attorney, the Hearing Officer shall require such party to designate a lead counsel who shall conduct the case for that party. The Hearing Officer may allow substitution of the lead counsel.

(d) All witnesses at a hearing shall testify under oath.

(e) A party may conduct cross-examination if required for a full and true disclosure of the facts.

.060. *Corrections to the Transcript.* Suggested corrections to the transcript of the record may be offered within ten (10) days after the transcript is filed in the proceeding, unless the Hearing Officer shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter and the Hearing Officer. If suggested corrections are not objected to, the Hearing Officer will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the Hearing Officer, who shall then determine the manner in which the record shall be changed, if at all.

.070. *Formal Exceptions.* Formal exceptions to rulings of the Hearing Officer during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the Hearing Officer the action which he desires.



.080. Briefs. Briefs shall be filed only when requested or permitted by the Hearing Officer. They shall conform, as near as may be, to the rules herein provided for forms of pleadings. The points involved shall be concisely stated. The evidence in support of each point shall be briefly summarized, and the argument and authority shall be organized and directed to each point in a concise and logical manner. Briefs shall contain a table of contents and authorities.

.090. Admissibility in General. Rules of evidence shall be governed by Section 14, Article 6252-13a, Texas Civil Statutes.

.100. Documentary Evidence; Official Notice. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, party shall be given an opportunity to compare the original and the copy. When numerous documents are offered, the Hearing Officer may limit those admitted to a number which are typical and representative, and may in his discretion require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the Hearing Officer shall require that all parties of record or their representatives be given the right to examine the document from which such abstracts were made.

In connection with any hearing held, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the Agency's specialized knowledge. Party shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noted, including any staff memoranda or data and they must be afforded an opportunity to contest the material so noted. The special skills or knowledge of the Agency and its staff may be utilized in evaluating the evidence.

.110. Limitation on Number of Witnesses. The Hearing Officer shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

.120. Exhibits.

(a) **Form:** Exhibits of documentary character shall be of such size as not unduly to encumber the files of the records of the Agency. There shall be a brief statement on the first sheet of exhibit of what the exhibit purports to show. Exhibits shall be limited to fact material and relevant to the issues involved in a particular proceeding.

(b) **Tender and service:** The original of each exhibit offered shall be tendered to the reporter for identification; one copy shall be furnished to the Hearing Officer and one copy to each other party of record or his attorney or representative.

(c) **Excluded Exhibit:** In the event an exhibit has been identified, objected to and excluded, the Hearing Officer shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the Hearing Officer with his ruling, and shall be included in the record for the purpose of only preserving the exception.

(d) **After Hearing:** Unless specifically directed by the Hearing Officer or by the Commissioner, no exhibit will be permitted to be filed in any proceeding after conclusion of the hearing, with service of copies of the late-filed exhibit served on all parties of record.

.130. Offer of Proof. When testimony on direct examination is excluded by ruling of the Hearing Officer, the party offering such evidence shall be permitted to make an offer of proof by eliciting from the witness said testimony to be placed in a bill of exception and such offer of proof shall be sufficient to preserve the point for review. Alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

.140. Discovery; Depositions. Following written requests by a party, the Commissioner or any Hearing Officer may issue a commission addressed to officers authorized by statute to take a deposition of a witness. Such commission shall be issued only after a showing of good cause and deposit of sums sufficient to ensure payment of expenses incident to the deposition. The use of any deposition in any proceeding shall be governed by the Administrative Procedure and Texas Register Act.

.150. Subpoenas. Following written request by a party or on his own motion:

(a) Subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a pending proceeding may be issued by the Commissioner, or, during the course of a pendency of a hearing, by a commission representative of the Agency at the direction of the Hearing Officer.

(b) Motions for subpoenas to compel the production of books, papers, accounts or documents shall be addressed to the Commissioner or Hearing Officer, shall be verified and shall specify as nearly as possible the books, papers, accounts or documents desired in the material and relevant facts to be proved by them. If the matter sought is relevant, material and necessary and will not result in harassment, imposition, or undue inconvenience or expense to the witnesses to be required to produce the same, the Commissioner, or a commissioned representative of the Agency at the direction of the Hearing Officer, may issue a subpoena, compelling production of books, papers, accounts or documents as deemed necessary.

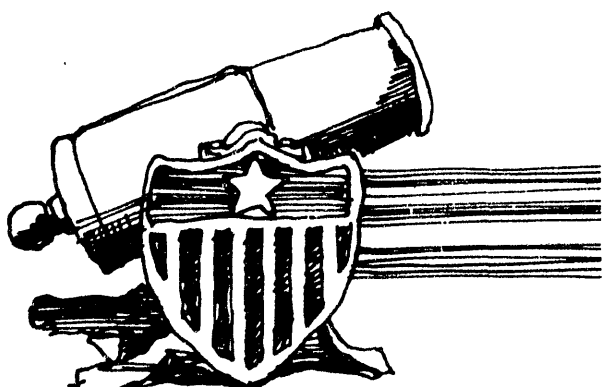
(c) Such subpoena shall be issued only after a showing of good cause and deposit of sums sufficient to ensure payment of expenses incident to the subpoenas. Payment of witnesses fee shall be made in a manner prescribed in the Administrative Procedure and Texas Register Act.

.160. Proposal for Decision. If in a contested case the Commissioner has not heard the case or read the record, the decision, if adverse to a party other than the Agency, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the Commissioner. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this paragraph.

.170. Filing of Exceptions and Replies.

(a) Any party of record may, within twenty (20) days after the date of service of the Hearing Officer's proposal for decision, file exceptions to the proposal for decision, and replies to such exceptions may be filed within fifteen (15) days after the date for filing of such exceptions. A request for extension of time within which to file exceptions or replies shall be filed with the Hearing Officer, and a copy thereof shall be served on all other parties of record by the party making such request. The Hearing Officer shall promptly notify the parties of his action upon the same and shall allow additional time only in extraordinary circumstances where the interests of justice so require.

(b) Exceptions and replies on a proposal for decision shall conform as near as may be to the rules herein provided for form of pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity and such evidence in the argument shall be grouped under the exceptions to which they relate.



.180. Motions for Rehearing.

(a) Prior to the entry of his order, if the Commissioner concludes that substantial errors of procedure or the exclusion of evidence have so affected the record as to render it impractical to determine the case justly and fairly upon the record, he may order a rehearing.

(b) Unless extension or reduction be granted under Part C below, the times prescribed in this Part B shall control. If a party wishes to file a motion for rehearing, it must be filed with the Commissioner within fifteen (15) days after the date of rendition of a final decision or order. Replies to a motion for rehearing, if any, must be filed with the Commissioner within twenty-five (25) days after the date of rendition of the final decision or order. A motion for a rehearing is not a prerequisite to an appeal before the State Board of Education.

(c) The Commissioner may by written order extend the period of time for filing the motion for rehearing and replies, except that an extension may not extend the period for the Commissioner's action on the motion for rehearing beyond sixty (60) days after the date of rendition of his final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, sixty (60) days after the date of the final decision or order. The parties may by agreement with the approval of the Commissioner reduce any of the times provided in this rule.

Issued in Austin, Texas, on December 31, 1976.

Doc No. 760059 M. L. Brockette
Commissioner of Education
Texas Education Agency

Effective Date: January 1, 1976

Expiration Date: April 29, 1976

For copies of this document, please call (512) 475-4123.

Appeals to State Board of Education 226.71.03

Because the statute (Section 11.13, Texas Education Code) under which hearings have been conducted is replaced effective 12:01 a.m., January 1, 1976, by a new statute (Article 6252-13a, Texas Civil Statutes) and because of the various statutes which place upon the Commissioner of Education official responsibility for adjudicating appeals from decisions of local boards of education, some of these appeals are on matters of student discipline and may involve the student's civil rights under the constitution of the United States or the Texas constitution, and because matters concerning the licensure of teachers and other school personnel may be before the Commissioner, the revocation of a license is a property right and may be ap-

pealed through the courts and because several matters have been appealed to the Commissioner and hearing dates deferred until after January 1, 1976, when Article 6252-13a, Texas Civil Statutes, becomes effective in order to make it possible for all hearings and appeals to be conducted under the same rules.

Therefore, the Commissioner of Education is promulgating Emergency Rules 226.71.03.010 through 226.71.03.050, to become effective immediately at 12:01 a.m. on January 1, 1976, or upon filing with the Secretary of State, whichever is later.

These rules are promulgated under the authority of Article 6252-13a, Texas Civil Statutes.

.010. Procedure for Appeal. Any party who has been aggrieved by a decision of the Commissioner may appeal that decision to the State Board of Education.

(a) The aggrieved party or petitioner must file an appeal with the Commissioner within thirty (30) days from the date of his decision, or of the motion for rehearing, if any, is overruled by the Commissioner, or, if no action was taken by the Commissioner, from the date the motion for rehearing was overruled by operation of law or, if party does not file a motion for a rehearing before the Commissioner, 30 days from the date of his decision.

(b) A copy of the appeal request shall be sent to all parties of record before the Commissioner as provided in Section .71.01.

(c) The record of appeal to the Board shall consist of the following:

- (1) the written record made before the Commissioner;
- (2) all exhibits, petitions, answers, briefs, written arguments and documentary evidence presented at the hearing before the Commissioner;
- (3) written order entered by the Commissioner along with all motions for rehearing, answers, and orders of the Commissioner, if any, overruling the motion for rehearing;
- (4) the Commissioner shall certify the materials set forth above to the Board within 10 days of receipt of the notice of appeal.

.020. Notice. The Board shall, through the Commissioner, cause notice to be given to all Parties of record of the date and time for hearing, which shall be within forty-five (45) days from receipt of the notice of appeal.

.030. Testimony and Evidence.

(a) At the hearing before the Board any interested party to the appeal may file a brief in at least five copies. Appeals to the Board shall be considered on the record, briefs and oral argument only. If the Petitioner desires to submit a brief, it must be submitted within fifteen (15) days from the date the notice of appeal was filed with the Commis-

sioner and reply briefs must be submitted within thirty (30) days from the date the notice of appeal was filed with the Commissioner.

(b) Any party desiring to make oral argument before the Board must file a statement of intention to do same not less than ten (10) days prior to the date set for the hearing before the Board.

.040. Decisions. The decision of the State Board of Education shall be rendered within sixty (60) days from the date the hearing is closed. A copy of the decision shall be mailed to all parties of record.

.050. Rehearing.

(a) Motions for rehearing must be filed with the Board within ten (10) days after the date of the rendition of a final decision or order. Replies to a motion for rehearing must be filed with the Board within twenty (20) days after the rendition of the final decision or order, and the Board's action on the motion must be taken within twenty-five (25) days of the date of the rendition of the final decision or order.

(b) The Commissioner may by written order extend the period of time for filing the motion for rehearing and replies, except that an extension may not extend the period for the Board's action on the motion for rehearing beyond sixty (60) days after the date of rendition of his final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, sixty (60) days after the date of the final decision or order.

(c) The Board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication.

Issued in Austin, Texas, on December 31, 1976.

Doc. No. 760060 M. L. Brockette
Commissioner of Education
Texas Education Agency

Effective Date: January 1, 1976

Expiration Date: April 29, 1976

For copies of this document, please call (512) 475-3271.





Texas Health Facilities Commission

Exemption Certificates and Declaratory Rulings THFC Emergency Rule and Regulation No. 3 315.07.01

Whereas, the Texas Health Facilities Commission, hereinafter styled the Commission, is empowered and authorized to issue Declaratory Rulings and Exemption Certificates under the provisions of House Bill 2164, Acts 1975, 65th Legislature, Regular Session, (Article 4418(h), V.A.C.S.) hereinafter referred to as the Act, relating to the regulation of the planning, development, construction, and expansion of certain health care facilities and services within the State of Texas; and

Whereas, a number of persons have petitioned the Commission for an immediate decision for Declaratory Rulings and Exemption Certificates; and

Whereas, the Commission has determined and hereby finds and declares that an emergency exists for applications now pending and those to be filed for Declaratory Rulings and Exemption Certificates and that immediate action is and will be necessary on these applications; and

Whereas, the Commission conducted a public hearing on the 22nd day of September, 1975, and received testimony relating to proposed Rule and Regulation No. 3; and

Whereas, several persons appeared, and testified and submitted documentary materials under oath in connection with Proposed Rule and Regulation No. 3;

Now, therefore, the Commission, after consideration of all testimony and evidence, issues the following Emergency Rule and Regulation No. 3 and be it so ordered.

Be it further ordered that this Emergency Rule and Regulation No. 3 be filed forthwith in the Office of the Secretary of State of the State of Texas, and distributed as

provided in Texas Health Facilities Commission Emergency Rule and Regulation No. 2.

.001. *Exemption Certificates and Declaratory Rulings.*

Section 1. This Rule and Regulation specifically supersedes Texas Health Facilities Commission Emergency Rule and Regulation No. 1, and changes in wording from Rule and Regulation No. 1 made herein are indicated by an asterisk (*) at the beginning of the appropriate sections. New or unchanged sections are not marked.

Section 2. The rules and regulations contained in this Texas Health Facilities Commission Emergency Rule and Regulation No. 3 are not intended to expand or modify the meaning and intent of the Act, but are promulgated for the purpose of clarification, explanation, and implementation. Where any terms or sections of this Rule are found to be inconsistent with the Act by judicial determination, the Act shall apply in those instances, and the remaining terms and sections of this Rule shall continue in effect.

Section 3. The terms used in this Rule and Regulation have the same meaning and definition as used in the Act.

Section 4. "Development" means those activities, other than planning or predevelopment, which on their completion result in the consummation of a project or a significant financial commitment toward the consummation of a project, and includes the adoption of ordinances, orders, or resolutions authorizing the issuance of bonds. For the purposes of Sections 3.12, 3.14, and 6.02 of the Act, "Development" includes, but is not limited to:

A. The execution of binding contracts or contractual commitments for, or the actual initiation or commencement of:

(1) Construction of all or part of a facility, including but not limited to:

(a) site preparation,
(b) renovation or alteration of an existing facility which will increase bed capacity or expand the capability for the direct delivery of institutional health care services as defined in the Act.

(2) Acquisition by purchase, lease, or gift of substantial equipment for the direct delivery of institutional health care services, as defined in the Act.

(3) Installation of utilities for a facility.

B. Solicitation and receipt of donated funds which constitutes a significant financial commitment for a specific and finite project which costs in excess of \$100,000 and/or expands services, and provided the donations are contingent upon use for that specific and finite project.

C. The execution of binding contracts for interim or permanent financing which constitutes a significant financial commitment toward the project.

D. The allocation of Hill-Burton Construction funds by the State Board of Health or construction funds allocated under P.L. 93-641 by the Texas Board of Health

Resources.

E. In the case of the organization of a health maintenance organization which requires a new or modified facility:

- (1) the acceptance of a planning or development grant for said organization from the United States Department of Health, Education, and Welfare;
- (2) the filing of a request with the Texas Board of Insurance for a Certificate of Authority;
- (3) the solicitation or enrollment of clients or patients.
- (4) the activities enumerated in A through D of this Section, where applicable.

F. In the case of home health agencies:

- (1) the commencement of operation of a branch or sub-unit or hiring staff for that purpose;
- (2) commencement of employment of administrative staff for a new parent agency;
- (3) the activities enumerated in A through D of this Section, where applicable.

Provided, that the execution of binding contracts or contractual commitments referenced in this Section including the solicitation and receipt of donated funds for a specific and finite project which are made contingent upon the obtaining of a Declaratory Ruling, Exemption Certificate, or Certificate of Need approving said project shall not be considered a violation of the Act or development as defined herein.

Section 5. Expansion of service or providing a service not currently offered by a facility under Section 3.01(a)(1) of the Act shall include but not be limited to at least the activities listed in this Section.

A. In the case of all health care facilities, the addition of one or more of the following services to existing services, and/or expansion within one or more of these services: Nuclear Medicine, Emergency, Radiology (diagnosis), Radiation Therapy, Pharmacy, Surgery, Psychiatry, Physical Medicine, Outpatient, Intensive Care, Respiratory, Pediatrics, Obstetrics, Anesthesiology, Laboratory, Renal Dialysis, General Medical, Recreation, Social Services, Speech Therapy, Vocational or Occupational Therapy, Pathology, Nursing, and Home Health Aid.

B. In the case of custodial or nursing facilities, the increase in levels of care for participating medicare/medicaid facilities.

C. In the case of alcohol, drug abuse, or other outpatient treatment facilities, the addition of new treatment modalities.

D. In the case of home health agencies, the addition of a sub-unit or branch.

Section 6. For the purposes of Section 3.01(a)(1) of the Act, substantial expansion of existing services does not include:

- A. Increases in staff.
- B. In the case of expansion of an inpatient service

made only to accommodate change in patient mix or occupancy provided the expansion will not change the licensed bed capacity of the facility, and the cost of expansion will not exceed \$100,000.

C. In the case of expansion of an outpatient service made only to accommodate change in patient mix or increased demand provided the expansion will not necessitate an addition to the square footage of the facility, and the cost of expansion will not exceed \$100,000.

A person desiring to expand an existing service may make an application for an Exemption Certificate under Section 3.01(a)(2) of the Act or file an application for a Certificate of Need. Upon making application for an Exemption Certificate under Section 3.01(a)(2) a person may submit argument supporting the contention that a particular expansion of an existing service is not substantial.

*Section 7. A person is eligible for an Exemption Certificate under Section 6.02 of the Act for a pending project if:

A. within 365 days immediately preceding the effective date of the Act, the person initiated or continued the health care facility licensing application process by submitting preliminary or final plans for a project to the proper state licensing agency, and

B. within 365 days immediately preceding the effective date of the Act, such agency took an action tantamount to approval of said preliminary or final plans, and the person applies for an Exemption Certificate by midnight September 25, 1975.

*Section 8. On proper petition, a person shall be issued an Exemption Certificate under Section 3.02 of the Act if the Commission determines that:

A. the proposed project encompasses only the repair or replacement of a facility or equipment damaged or destroyed by fire, flood, or natural disaster and that the repair or replacement will not expand the facility or increase the services provided in or by the facility beyond the level at which they existed prior to the fire, flood, or natural disaster;

B. in the case of expansion of services, the proposed project would not substantially expand a service currently offered;

C. in the case of modification of an existing facility, the total cost of proposed modification will not exceed \$100,000;

D. in the case of replacement or modification of a facility existing on the effective date of this Act, within five years after the effective date of this Act:

(1) the replacement or modification was necessary on the effective date of this Act to comply with licensing, certification, safety, or health requirements imposed under the authority of federal law, state law, or valid city ordinance; and

(2) the replacement or modification will not expand the facility or increase the services provided in or by the facility beyond the level existing on the effective date

of Act.

Section 9. The Commission shall not be bound by an applicant's characterization of a project as an expansion of services or a modification of an existing facility when considering an application for an Exemption Certificate under Section 3.02(a)(2) of the Act. The Commission shall make an independent determination as to whether Section 3.02 (a)(2) or 3.02(a)(3) is applicable to the project.

Section 10. On proper petition a person may be eligible for an Exemption Certificate under Section 3.02 of the Act, if the Commission determines that:

A. In the case of replacement or modification of a facility existing on or after May 28, 1975, the following conditions are met:

(1) said replacement or modification is necessary to comply with licensing, certification, safety, or health requirements imposed under the authority of federal or state law, or valid city ordinance,

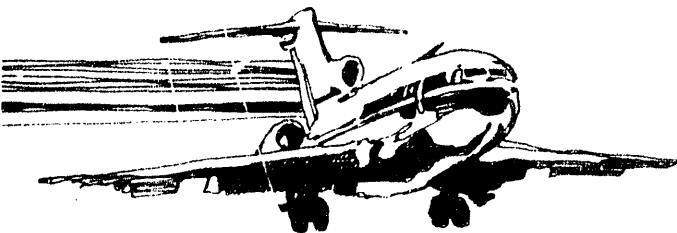
(2) the circumstances from which the necessity occurs for the replacement or modification arose after May 28, 1975, and

(3) the replacement or modification will not expand the facility or increase the level of services provided.

B. In the case of long-term care facilities, a change in level of care from ICF II to ICF III, MR, or skilled, or from ICF III to MR or skilled; or from MR to ICF III or skilled is not a substantial increase in service.

Section 11. An Exemption Certificate under this Act is limited to the scope and purpose of the project as described in the application before the Commission and shall have no applicability to any intended or proposed future plan, phase, or use.

Section 12. The Commission may determine upon proper petition that a person is eligible for a Declaratory Ruling under Section 3.03 of the Act that the Act does not apply to that part of a project upon which development had commenced prior to May 28, 1975, the effective date of the Act.



Section 13. In determining those activities which constitute development prior to May 28, 1975, under Section 3.03 of the Act, the activities enumerated in Section 4 of this Rule shall be included. A Declaratory Ruling based upon a determination that development had commenced

prior to May 28, 1975, shall be subject to the following limitations:

A. The Commission may find that development of a project has been abandoned if, on or after January 15, 1977, the holder of said ruling has not placed on file with the Commission an affidavit from the building department having jurisdiction indicating that substantial progress has been made on the project and the holder of said ruling has not placed on file with the Commission valid notice of construction completion indicating a completion date of no later than January 15, 1978. The Commission may extend the foregoing time limits if good cause is shown why an extension should be granted.

B. For the purposes of this Section, "substantial progress" means:

(1) For structures of three or fewer stories, completion of the foundations and footings; the structural frame; the mechanical, electrical, and plumbing rough-in; the rough flooring; the exterior walls and windows; and the finished roof.

(2) For structures of more than three stories, in addition to (1) above, a contractor's schedule of work shall be filed with the Commission by January 15, 1977. Every three months thereafter, until completion, evidence shall be submitted to the Commission that construction is progressing on that schedule.

Section 14. For the purposes of Section 3.01(b) of the Act, the term "modification" does not include:

A. Routine remodeling, and routine maintenance and repair. "Routine remodeling, and routine maintenance and repair" means: Actions customarily undertaken which are necessary for the preservation of the capability of the real property and facility structure for the safe, effective, and efficient delivery of health services, and which do not expand health care service delivery capacity or provide additional direct institutional health care service(s). "Routine remodeling, and routine maintenance and repair" includes, but is not limited to, the painting of interior and exterior wall surfaces, the creation or relocation of non-loadbearing wall partitions, replacement of floor and ceiling coverings, replacement and repair of defective, obsolete, or deteriorating structure, including plumbing, or electrical wiring which provides a threat to the health, functioning capability, or safety of the facility or its occupants; and repair or replacement of an unforeseen structural or mechanical equipment failure, where said failure is not included in routine maintenance as defined, and the repair or replacement will not expand the facility or increase the direct health care services provided in or by the facility beyond the level existing at the time of said equipment or structural failure.

B. Expendable supplies.

C. Acquisition by purchase, donation, or lease, or repair, or replacement of equipment, which will not expand either patient or direct institutional health care services, according to the following limitations:

(1) In the case of purchase, the purchase cost of the item does not exceed \$100,000.

(2) In the case of donation, current market value of the item does not exceed \$100,000.

(3) In the case of lease, annual lease payments for the items do not exceed 30 percent of the current purchase price of such leased items.

(4) In the case of repair, such repair cost of the item does not exceed the replacement cost of the item up to a maximum of \$100,000.

(5) In the case of replacement, such replacement cost of the item does not exceed \$100,000.

This paragraph, (Section 14C), is subject to the condition that notice of all such acquisition, repair, or replacement of equipment shall be filed with the Commission between June 20 and June 30 and between December 20 and December 31 of each year for those actions taken during the preceding six months. All filings shall be made by 5 p.m. on the last date for filing, which shall be extended to the next working day if the last day of filing is a Saturday, Sunday, or State holiday. All filings by mail shall be postmarked no later than the day preceding the last filing day. Said notice shall briefly describe any acquisition and any such equipment being replaced or repaired, the nature of the repair or a description of the replacement equipment, and the cost of same, and the accuracy of said information will be sworn to or affirmed before a notary public. Pursuant to its authority under Section 2.06(a) of the Act, the Commission may in its discretion require more frequent and extensive reporting from individual facilities.

Section 15. The burden of correctly deciding whether acquisition, routine remodeling, routine maintenance and repair, or replacement under Section 14 would expand health care service delivery capacity or would increase direct health care service provided in or by the facility beyond the level existing prior to said acquisitions, routine remodeling, routine maintenance and repair, or replacement, rests with the person or facility desiring to do same. In making this decision, a person may request from the Commission an Exemption Certificate or a Declaratory Ruling under Section 3.03 of the Act stating whether the proposed maintenance, repair or replacement would expand health care service delivery capacity or would increase direct health care service provided in or by the facility beyond the level existing prior to said acquisition, remodeling, maintenance and repair, or replacement and would thus require a Certificate of Need or Exemption Certificate.

Section 16. If the cost of acquisition, repair, or replacement exceeds the limitations prescribed in Section 14C, then application shall be made to the Commission for an Exemption Certificate under Section 3.02 of the Act or for a Certificate of Need.

Section 17. For the purposes of Section 3.01(a)(2) of the Act, the phrase "change the bed capacity of an existing

facility" does not include the complete closing and cessation of delivery of health care services by a health care facility, or the reduction of licensed beds by a facility.

Section 18. The Act does not apply to health maintenance organizations which do not require the construction or modification of a facility, nor does it apply to emergency vehicular medical services.

Section 19. All applications for Exemption Certificates or Declaratory Rulings shall be submitted on THFC Forms 21 and 25, and accompanied by a fee of \$25.00 per application.

Issued in Austin, Texas, on December 19, 1975.

Doc. No. 760064 Renal B. Rosson
Vice-Chairman
Texas Health Facilities
Commission

Effective Date: October 10, 1975

Expiration Date: February 7, 1976

For copies of this document, please call (512) 475-6940.

Subscription Rates THFC Emergency Rule and Regulation No. 6 315.07.02.001

Whereas, the Texas Health Facilities Commission, hereinafter styled the Commission, is empowered and authorized to promulgate rules under the provisions of the Texas Health Planning and Development Act (Article 4418(h), V.A.C.S.) hereinafter referred to as the Act, to provide an efficient and orderly system for regulation of development, construction, expansion and/or modification of certain health facilities in the State of Texas; and

Whereas, the Commission has had many requests from people from all over the State of Texas for copies of the Commission's orders, proposed rules, rules, and official postings; and

Whereas, the Commission has determined and hereby finds and declares that the most economical procedure for charging persons requesting such information will be to charge annual subscription fees; and

Now, therefore, the Commission issues the following Emergency Rule and Regulation Number 6 and be it so ordered.

Be it further ordered that this Emergency Rule and Regulation Number 6 be filed forthwith in the Office of the Secretary of State of the State of Texas, and distributed as provided in this Commission's Emergency Rule and Regulation Number 2.

.001. *Subscriptions.* Beginning on January 1, 1976, the Commission will charge a \$52.50 annual fee (including sales tax) to any person desiring to receive a copy of proposed rules, rules, and official postings made by the Commission. Subscription charges shall be accrued as of the first day of the month during which the fee is received. All fees and charges are to be made by check or money order. Copies will be mailed beginning with those documents or materials mailed in the next regular mailing.

Signed and dated this 30th day of October, 1975, as ordered and effective on the 30th day of October, 1975.

Issued in Austin, Texas, on December 19, 1976.

Doc. No. 760065 Renal B. Rosson
 Vice-Chairman
 Texas Health Facilities
 Commission

Effective Date: October 30, 1975

Expiration Date: February 26, 1976

For copies of this document, please call (512)475-6940.

APA Requirements for Exemption Certificates and Declaratory Rulings THFC Emergency Rule and Regulation No. 8 315.07.03

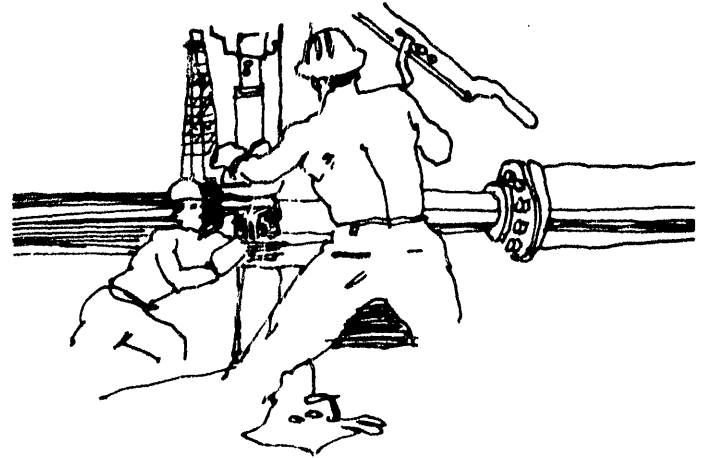
Whereas, the Texas Health Facilities Commission, hereinafter styled the Commission, is empowered and authorized to promulgate rules under the provisions of the Texas Health Facilities Planning and Development Act (Article 4418(h), V.A.C.S.), hereinafter referred to as the Act, to provide an efficient and orderly system for regulation of development, construction, expansion, and/or modification of certain health facilities in the State of Texas; and

Whereas, the Commission pursuant to Section 3.02(b) of Article 4418(h), V.A.C.S., has the authority to promulgate rules of procedure whereby a person may be granted an Exemption Certificate or Declaratory Ruling; and

Whereas, the Commission has determined and hereby finds and declares that an emergency exists for the reason that such procedures must be implemented to receive, process, and administer applications now pending and those to be filed and that immediate action is or will be necessary in order to insure the continued development of health care facilities and services for the people of Texas; and

Now, therefore, the Commission issues the following Emergency Rule and Regulation No. 8, and be it so ordered.

Be it further so ordered that this Emergency Rule and Regulation No. 8 be filed forthwith in the Office of the



Secretary of State of the State of Texas, and distributed as provided in this Commission's Emergency Rule No. 2.

.001. *THFC Emergency Rule No. 8*

(a) Exemption Certificate and Declaratory Rulings

(1) Upon receipt of an application for an Exemption Certificate or Declaratory Ruling, and receipt of the correct application filing fee, the Commission shall publish in the *Texas Register* (until January 1, 1976, publication will be as directed in THFC-ERR '2) a notice of all such applications accepted by the Commission. The notice shall state the name of the facility, the city or county in which the facility proposes to locate or is located, the general category of relief sought by the applicant, and a general description of the project planned.

(2) Within 12 days after the notice is published in the *Texas Register* or disseminated pursuant to ERR No. 2 only until January 1, 1976, any person desiring to oppose said application(s) must file a notice of intent to contest the application with the Chairman of the Commission. The first day for calculating these time standards shall be the first calendar day following publication or mailing of said notice. The 12th day will expire at 5:00 P.M. on the 12th consecutive day thereafter if the 12th day is a working day. If the 12th day is Saturday, Sunday, or State Holiday the last day shall be extended to 5:00 P.M. of the the next day that is not a Saturday, Sunday or State Holiday. When notice of intent to contest is mailed to the Chairman of the Commission it must be postmarked no later than the day prior to the last day allowed for filing notice of intent to contest.

(3) Any person may file a notice of intent to contest an application. Any person may withdraw his intent to contest at any time on application to the Chairman of the Commission.

(4) The form of the notice of intent to contest an application for an Exemption Certificate or Declaratory



Ruling must meet at least the following criteria:

- i. prepared on 8 1/2" by 11" or 8 1/2" by 14" paper;
- ii. contain the name of the person intending to contest the application and his representative;
- iii. the name of the facility, if any, the contesting person represents or has some interest in;
- iv. the legal owner of the facility listed in *iii.*, above;
- v. the reason(s) for contesting the application;
- vi. the reasons why the applicant should not be granted the relief sought;
- vii. an affirmation of truth and acknowledgment exactly as it appears below:

"I do solemnly swear or affirm that the information, dates, and representations submitted and included in this notice of intent to contest are, in each and every respect, true, accurate, and correct to the best of my knowledge and belief, and no misrepresentations of any nature are contained herein." A copy of this form is on file at the Texas Health Facilities Commission.

(b) Failure of a contesting party to supply any of the above information by the applicable deadline will result in defective notice of intent to contest and the application will be considered uncontested whereupon the Commission may dispense with any public hearing on the application upon stipulation with the applicant. If a valid notice of intent to contest an application is accepted by the Chairman of the Commission, the Chairman shall then set a hearing on the application for a day not less than 10 days after the expiration of the period of time allowed for contesting the application. The hearing shall be conducted pursuant to the rules for contested cases prescribed in the Administrative Procedure and Texas Register Act. This requirement for hearing can be dispensed with or abbreviated by stipulation or agreement among the parties pursuant to Section 13(e) of the Administrative Procedure and Texas Register Act (Article 6252-13a, V.A.C.S.).

(c) Pre-Hearing Conference

(1) In any proceeding, the Chairman of the Commission or his designee, on his own motion or on the motion of a party, may direct the parties, their attorneys or representatives to appear before an appointed Hearings Officer at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering:

- i. the simplification of issues;
- ii. the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports, to the end of avoiding the unnecessary introduction of proof;
- iii. the procedure at a hearing;
- iv. the limitation, where possible, of the number of witnesses; and
- v. such other matters as may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of such issues as in dispute.

(2) Action taken at the conference shall be recorded in an appropriate manner by the Hearings Officer unless the parties enter into a written agreement. Transcription costs will be taxed to the parties in accordance with the most current policies of the Commission at the time of said hearing.

(d) Burden of Proof. The burden of offering and proving sufficient evidence to convince the Commission to grant the requested relief is on the moving party. Responsibility for any failure concerning the sufficiency of evidence rests entirely with the moving party.

(e) After hearing on the application or after any abbreviated format agreed on by the parties, the Hearings Officer shall make recommendation on the application to the Commission.

(f) The Commission, in open meeting pursuant to Article 6252-17, V.A.C.S., shall receive the Hearings Officer's recommendation and rule on the application.

(g) Appeal and Review

(1) Pursuant to Section 3.02(e) of Article 4418(h), V.A.C.S., "If the application for an Exemption Certificate is denied, the applicant may apply for a Certificate of Need, and if the application for a Certificate of Need is denied, the applicant may raise in proceedings for judicial review as provided by this Act any error of the Commission in denying the Exemption Certificate."

(2) Pursuant to Section 3.03 of Article 4418(h), V.A.C.S., if after the applicant has sought a Declaratory Ruling and "the Commission rules that a Certificate of Need or an Exemption Certificate is required, the applicant may apply for an Exemption Certificate or a Certificate of Need and may seek judicial review of the Declaratory Ruling only in proceedings to review the

denial of a Certificate of Need as provided by this Act."

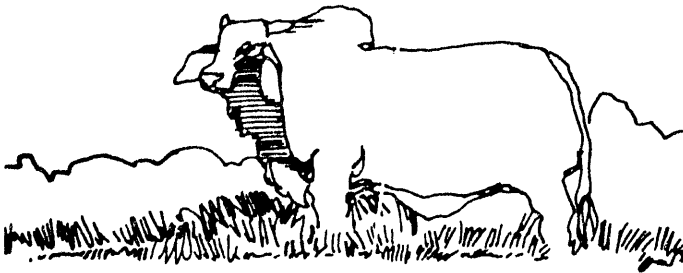
Issued in Austin, Texas, on December 19, 1975.

Doc. No. 760066 Renal B. Rosson
Vice-Chairman
Texas Health Facilities
Commission

Effective Date: October 30, 1975

Expiration Date: February 26, 1976

For copies of this document, please call (512) 475-6940.



Open Records Requirement-- THFC Emergency Rule and Regulation No. 9 315.07.04.001

Whereas, the Texas Health Facilities Commission, hereinafter referred to as the Commission, has received requests for copies of application information on file pursuant to disclosure requirements of the Open Records Act (Article 6252-17a, V.A.C.S.); and

Whereas, the Commission has determined and hereby finds and declares that an emergency exists for the reason that all persons have been guaranteed the right of public disclosure of certain documents on file with state agencies by the Open Records Act and the Commission desires to state its policy to all applicants and other interested persons; and

Now, therefore the Commission hereby finds, orders and declares that all applications, notice of intent to contest, and supporting information submitted to it are subject to public disclosure upon request by any interested person pursuant to the Open Records Act (Article 6252-17a, V.A.C.S.);

And, hereby further orders and declares that all persons who have made application to this Commission for Exemption Certificates, of Declaratory Rulings must submit to the Chairman of the Commission at Suite 450, One

Highland Center, Austin, Texas 78752, within 10 days of the effective date of this order, a listing of those sections or parts of the application or supporting information that the applicant considers to be excepted from disclosure, accompanied by a brief supporting both factually and legally the applicant's position.

The Commission further orders and declares that future applicants and contestants include a similar listing and brief for those matters contained in their applications, notices of intent to contest and supporting information which they believe to be excepted from disclosure under the Open Records Act. Such listing and brief must accompany the application, notice of intent to contest, or supporting information when filed with the Commission.

The Commission further orders and declares that on all applications, notices of intent to contest and supporting information received after the effective date of this order that fail to list and support sections deemed to be excepted from disclosure under the Open Records Act shall be considered in all parts to be open to public disclosure.

The Commission further orders and declares that all applications and supporting information received previous to the effective date of this order which fail to meet the requirements set out above shall be considered in all parts to be open to public disclosure.

The Commission hereby further orders and declares that the Chairman of the Commission will determine to accept or reject the arguments in submitted briefs and, if rejected, the Chairman shall notify each applicant by mail of the Chairman's decision. When the Chairman is required under the Open Records Act, he shall request an Attorney General opinion and notify the applicant of his action.

The Commission hereby further orders and declares that this Rule and Regulation supercedes Texas Health Facilities Commission Emergency Rule and Regulation No. 7.

Be it further ordered that this order of the Commission be filed forthwith in the Office of the Secretary of State of the State of Texas, and distributed to all persons who have made application to this Commission for Exemption Certificates and Declaratory Rulings before the effective date of this order and as provided in Texas Health Facilities Commission Emergency Rule and Regulation No. 2.

Issued in Austin, Texas, on November 12, 1975.

Doc. No. 760067 Renal B. Rosson
Vice-Chairman
Texas Health Facilities
Commission

Effective Date: November 13, 1975

Expiration Date: March 12, 1976

For copies of this document, please call (512) 475-6940.

Administrative Procedure and Texas Register Act Requirements for THFC Emergency Rule and Regulation No. 10 Exemption Certificates and Declaratory Rulings-- Correction of Errors 315.07.05

.001. Whereas, the Texas Health Facilities Commission, hereinafter styled the Commission, is empowered to promulgate rules under the provisions of the Texas Health Planning and Development Act (Article 4418(h), V.A.C.S.), hereinafter referred to as the Act, to provide an efficient and orderly system for regulation of development, construction, expansion, and/or modification of certain health facilities in the State of Texas; and

Whereas, the Commission adopted Interim Permanent Rules on December 1, 1975, and ordered that those rules be filed with the Secretary of State before 5:00 p.m. on that date; and

Whereas, a copy of the adopted rules was timely filed with the Secretary of State, however, the rules so filed contained several minor errors and omissions which must be corrected; and

Whereas, the Commission has determined and hereby finds and declares that an emergency exists for the reason that the rules as adopted on December 1, 1975, contained errors and omissions which, if left uncorrected, could confuse applicants seeking relief from the Commission and that further correction is necessary in order to insure that no delay is made in the continued development of the Certificate of Need program, said program being necessary for the continued development of health care facilities and services for the people of Texas; and

Now therefore, the Commission issues the following Emergency Rule and Regulation No. 10 and be it so ordered.

Be it further ordered that these corrections be incorporated into the adopted Interim Permanent Rules upon printing.

Be it further ordered that this Emergency Rule and Regulation No. 10 be filed forthwith in the Office of the Texas Secretary of State, and distributed as provided in this Commission's Emergency Rule and Regulation No. 2.

The following numerical list represents the corrections that will be made:

1. On page *ii* the table of contents number for "Criteria" should be changed to 315.06.03.001-.012.

2. Page 11, in paragraph .006, second line of that paragraph add "or his designee" after the word Chairman.

3. Page 14, paragraph (2), on the fourth line up from the bottom of the page the line currently reads "state sales tax of 4% (four percent)..." It should be changed to read "state and local sales tax of 5% (five percent)..."

4. Page 25, paragraph (d), the word "particular," the first word on the third line should be deleted from the last sentence of that paragraph.

5. Page 35, paragraph .003 in the second full paragraph the words "for an exemption certificate of declaratory ruling" should be deleted between the words "application" and "must".

6. Page 38, paragraph .005, in the next to the last line of that paragraph the next to the last word "of" should be changed to "or".

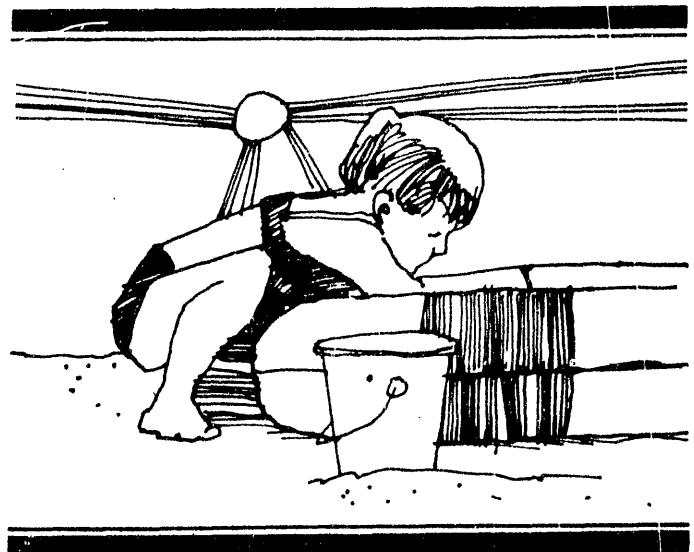
7. Page 39, paragraph .008, the heading for subparagraph (a) was inadvertently deleted and should now read "(a) Designation and Duties".

8. Page 40, paragraph .008(b)(1), the subparagraphs were numbered 1 through 5 and should be changed to properly read A through E.

9. Page 48, in the first full paragraph on the seventh line of that paragraph the words "or will order" were inadvertently deleted and should be added between the words "order" and "the" on that line.

10. Page 49, paragraph .012(a), in the second line of that paragraph the words "may" and "be" between "original" and "readily" should be deleted and insert "is" before "not".

11. Page 50, paragraph .013, the first full paragraph, the second word on the tenth line, "agency" should be changed to "Commission".



12. Page 52, paragraph .016, was incorrectly labeled "0.16" and should be corrected here.

13. On THFC Form 20, 11-75, the address portion abbreviates Suite as "Su."; this should be changed to the complete spelling of the word Suite.

Signed and dated this 9th day of December, 1975.

Issued in Austin, Texas, on December 19, 1975.

Doc. No. 760068 **Renal B. Rosson**
Vice-Chairman
Texas Health Facilities
Commission

Effective Date: January 1, 1976

Expiration Date: April 7, 1976

For copies of this document, please call (512) 475-6940.

State Department of Public Welfare

Day Care Licensing 326.90

The Act cited below states that all previously existing licensing regulations will no longer be enforceable January 1, 1976. To meet the requirements of the law and to insure the health and safety of the children living in or attending facilities subject to licensing, the Department of Public Welfare is adopting the following emergency rules. These minimum standards must be met by a child care facility before it can be licensed by the Department. A facility cannot legally operate without a license. The rules become effective immediately on filing with the Secretary of State and will be enforced from that date.

These rules are promulgated under the authority of Article 695a-3, Texas Civil Statutes.

Because of the length of these rules, the text will not be published in the *Register*. The rules may be examined at the office of the *Texas Register*, Suite 550, Texas Commodore Building, 8th and Brazos Streets, Austin, Texas, during normal working hours. Copies of the rules may be obtained from Susan L. Johnson, Department of Public Welfare, John H. Reagan State Office Building, Austin, Texas 78701, telephone (512) 475-4601.

Listed below are the rule numbers, sub-category titles, and docket numbers of the rules:

Standards for Child-Placing Agencies (Day Care Only)
326.90.01.001-.011
Doc. No. 760072

Standards for Family Day Homes
326.90.02.001-.031
Doc. No. 760073

Standards for Kindergartens and Nursery Schools
326.90.03.001-.033

Doc. No. 760074

Standards for Schools, Kindergarten and Above
326.90.04.001-.033

Doc. No. 760075

Standards for Day Care Centers
326.90.05.001-.035

Doc. No. 760076

Standards for Registered Family Homes
326.90.06.001-.022

Doc. No. 760077

Standards for Group Day Care Homes
326.90.07.001-.023

Doc. No. 760078

Procedures and Policies--Required Immunizations
326.90.08.001

Doc. No. 760079

Forms and Tables--Day Care Licensing
326.90.09.001-.002

Doc. No. 760080

Issued in Austin, Texas, on December 31, 1975.

Doc. No. 760072 **R. W. Vowell**
Commissioner
State Department of
Public Welfare

Effective Date: January 1, 1976

Expiration Date: April 29, 1976

For copies of this document, please call (512) 475-4601.



24-Hour Care Licensing 326.91

The Act cited below states that all previously existing licensing regulations will no longer be enforceable January 1, 1976. To meet the requirements of the law and to insure the health and safety of the children living in or attending facilities subject to licensing, the Department of Public Welfare is adopting the following emergency rules. These minimum standards must be met by a child care facility before it can be licensed by the Department. A facility cannot legally operate without a license. The rules become effective immediately on filing with the Secretary of State and will be enforced from that date.

These rules are promulgated under the authority of Article 695a-3, Texas Civil Statutes.

Because of the length of these rules, the text will not be published in the *Register*. The rules may be examined at the office of the *Texas Register*, Suite 550, Texas Commodore Building, 8th and Brazos Streets, Austin, Texas, during normal working hours. Copies of the rules may be obtained from Susan L. Johnson, Department of Public Welfare, John H. Reagan State Office Building, Austin, Texas 78701, telephone (512) 475-4601.

Listed below are the rule numbers, sub-category titles, and docket numbers of the rules:

Standards for Child-Placing Agencies (24-Hour Care and Adoption)

326.91.01.001-.024
Doc. No. 760081

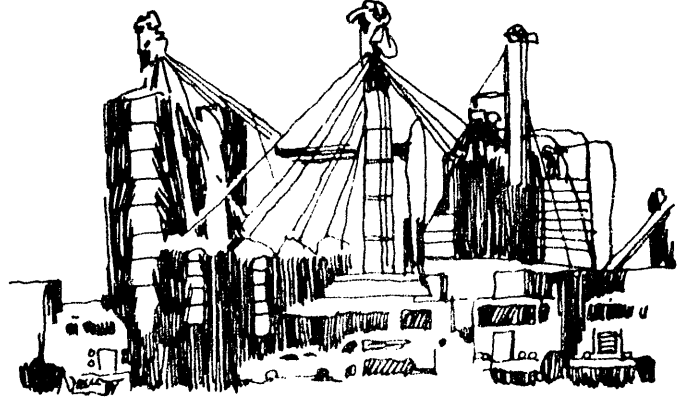
Standards for Agency Homes
326.91.02.001-.008
Doc. No. 760082

Standards for Foster Family Homes
326.91.03.001-.019
Doc. No. 760083

Standards for Foster Group Homes
326.91.04.001-.026
Doc. No. 760084

Standards for Halfway Houses
326.91.05.001-.029
Doc. No. 760085

Standards for Institutions Serving Mentally Retarded Children
326.91.06.001-.029
Doc. No. 760086



Standards for Institutions Providing Basic Child Care
326.91.07.001-.029
Doc. No. 760087

Standards for Therapeutic Camps
326.91.08.001-.028
Doc. No. 760088

Standards for Residential Treatment Centers
326.91.09.001-.030
Doc. No. 760089

Standards for Emergency Shelters
326.91.10.001-.024
Doc. No. 760090

General Policies and Procedures--Procedural Guide for
Pharmaceutical Services in the Child-Caring Institution
326.91.12.001
Doc. No. 760091

Forms and Tables--Daily Food Guide
326.91.13.001
Doc. No. 760092

Issued in Austin, Texas, on December 31, 1975.

Doc. No. 760081 R. W. Vowell
Commissioner
State Department of
Public Welfare

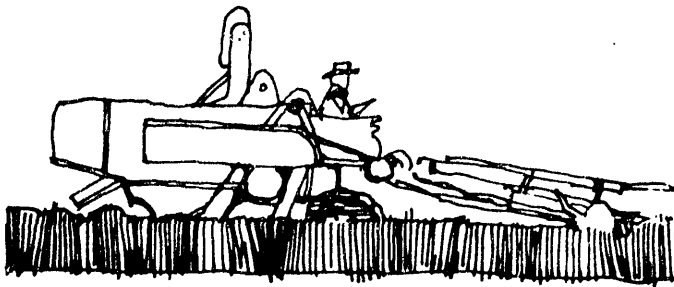
Effective Date: January 1, 1976

Expiration Date: April 29, 1976

For copies of this document, please call (512) 475-4601.

Numbering System-- Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the category of rules to which the rule belongs. The third unit (two digits) indicates the subcategory of rules, if any, within the category. The fourth unit (three digits) indicates the individual rule.

Symbology for Rules Section-- Changes to existing material are indicated in *bold italics*. [Brackets] indicate deletion of existing material.



Texas Education Agency

The School Year 226.41.04

The State Board of Education is proposing to amend Rule 226.41.04.010, which sets forth the number of days required for operation of the school program. Proposed amendment one would remove language from Section (a), which limits to three days the number of 10 days that can be used for work days.

Proposed amendment two would add language to Section (a), which would require the local school district to plan how to use the 10 days of inservice and preparation and include all staff members.

Public comment on the proposed amendments to Rule 226.41.04.010 is invited. Comments may be submitted by telephoning the office of J. B. Morgan, Associate Commissioner for Educational Policy Formulation, at (512) 475-4789, or by writing to Dr. J. B. Morgan at:

201 East Eleventh Street
Austin, Texas 78701.

This rule is promulgated under the authority of Section 16.310 Texas Education Code.

010. Days of Operation Required. Regular School Program. All school districts shall operate on the basis of a

quarter system, with the schools being in operation at least three quarters during each school year, providing 180 days of instruction for pupils.

The last two days of each quarter may be set aside for purposes of giving final examination in grades where classroom instruction is on a departmentalized basis provided a formalized examination schedule is established.

The last three days of instruction during a quarter may be set aside to allow 12th-grade pupils who are candidates for graduation to prepare for graduation exercises. In addition to the 180 instructional days, a total of 10 days shall be allowed for inservice within the district and for activities relating to the beginning and ending of the school term.

School districts shall plan an inservice training and preparation program for all staff members. The school district may, at its discretion, count as a part of these 10 days allowed for inservice those statewide or regional curriculum or instructional subject workshops planned by and/or sponsored by regional education service centers or the Texas Education Agency. [Not more than three of the 10 days may be used for workdays. Workdays are defined as those on which pupils are not present and teachers are on duty in their assigned work areas for such purposes as preparing for the beginning and ending of the school session, grading examination papers, and/or recording grades. School districts are responsible for planning, developing and presenting timely, well-organized and appropriate inservice programs.]

A copy of each school district's inservice training and preparation plan shall be in writing and filed with the Texas Education Agency for review and technical assistance. A copy shall be maintained in local school districts for review by accreditation teams.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760055 M. L. Brockett
Commissioner
Texas Education Agency

Proposed Date of Adoption: February 14, 1976

For copies of this document, please call (512) 475-4123.

Hearings and Appeals Generally 226.71.01

The State Board of Education is proposing to adopt Rule 226.71.01.010 through 226.71.01.210 inclusive, setting forth the orderly process for Hearings and/or Appeals before the Commissioner and the State Board of Education. These rules became effective January 1, 1976 as emergency rules. The effectiveness of the emergency rules will expire with the effective date of these rules twenty (20) days after they have been published as adopted.

Public comment on the proposed amendments to Rule 226.71.01.610 through 226.71.01.210 inclusive is invited. Comments may be submitted by telephoning the office of J. B. Morgan, Associate Commissioner for Educational Policy Formulation at (512) 475-4789, or by writing to Dr. J. B. Morgan at 201 East 11th Street, Austin, Texas 78701.

These rules are promulgated under the authority of Article 6252-13a, Texas Civil Statutes.

.010. Nature of Hearings and Appeals. Persons having any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the Commissioner of Education, who after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved, but nothing contained in this series shall deprive any party of any legal remedy.

These rules shall include, but not be limited to, appeals from the following actions:

- (a) Actions or decisions by a District Board of Trustees or Board of Education;
- (b) Actions or decisions by a County Superintendent;
- (c) Actions or decisions regarding cancellation of a Teacher Certificate;
- (d) Denial or revocation of a Proprietary School Certificate;
- (e) Recommendations made to the Commissioner by the Texas Professional Practices Commission.

The decisions of the Commissioner of Education shall be subject to review by or appeal to the State Board of Education.

.020. Definitions: For Purposes of These Rules.

- (a) 'Agency' means the Central Education Agency.
- (b) 'Board' means the State Board of Education.
- (c) 'Commissioner' means the State Commissioner of Education.
- (d) 'Contested Case' means a proceeding in which the legal rights, duties or privileges of a party are to be determined by the Commissioner and/or the Board.
- (e) 'Hearing Officer' means any person appointed by the Commissioner to conduct hearings on matters within the Agency's jurisdiction.
- (f) 'Party' means the agency or a person who has appeared in a contested case or has filed timely notice of interest to appear, and who has not been dismissed or excluded by the Commissioner or Hearing Office.
- (g) 'Person' means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the Agency.

(h) 'Pleading' means written allegations filed by a party requesting or opposing action by the Commissioner or the Board.

(i) 'Petitioner' means a party seeking review and/or action from the Commissioner or the Board.

(j) 'Respondent' means any party opposing the action sought by Petitioner from the Commissioner or the Board.

(k) 'Intervenor' means any party otherwise not defined.

.030. Object of Rules. The purpose of these rules is to provide for a simple and efficient system of procedure before the Agency to ensure uniform standards of practice and a fair and expeditious determination of causes. These rules shall be liberally construed with a view towards the purpose for which they were adopted.

.040. Scope of Rules. These rules shall govern the procedure for the institution, conduct and determination of all contested cases before the Agency. They shall not be construed so as to enlarge, diminish, or modify or alter the jurisdiction, powers or authority of the Agency or the substantive rights of any person.

.050. Ex Parte Consultations. Members or employees of the Agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate. In the disposition of *ex parte* matters that are required by law this rule does not apply.

.060. Filing of Documents. All petitions, motions, replies, answers, notices and other pleadings related to any proceeding pending or to be instituted before the Agency shall be filed with the Hearing Officer designated to preside in the case or, if no Hearing Officer be then designated, the Commissioner. They shall be deemed filed only when actually received by the designated Hearing Officer or the Commissioner (accompanied by the fee or deposit, if any, required by statute or Agency rules).

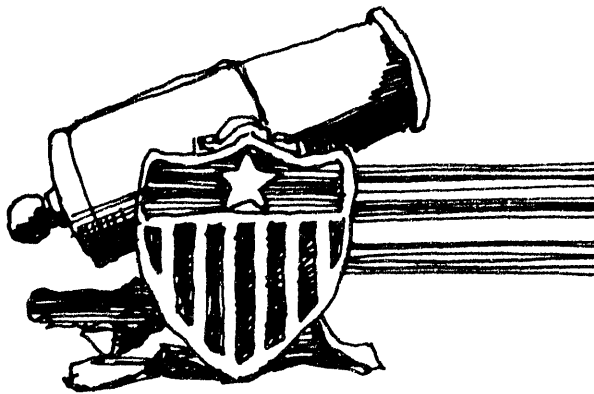
.070. Computing Time; Extensions.

(a) **Computing Time:** In computing any period of time governing hearing procedures which is prescribed or allowed by these rules, the period shall begin on the day after the act or event in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

(b) **Extensions:** Unless otherwise provided by statute, the filing of any pleading may be extended by order of the Hearing Officer, upon written motion duly filed with him prior to the expiration of the applicable

period of time for the filing of the same, showing there is good cause for such extension of time and that the need therefor is not caused by the neglect, indifference or lack of diligence of the movant. A copy of such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof. Any party may file written pleadings contesting a motion to extend, serving all other parties contemporaneously with the filing thereof.

.080. *Agreements to be in Writing.* No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any contested case shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify or stipulate any right or privilege afforded by these rules, unless precluded by law. No stipulation or agreement shall be enforced unless signed by the attorney of record, if any, for each party to the stipulation or agreement.



.090. *Service of Pleadings.*

(a) *Service of Pleadings:* A copy of any protest, reply, answer, motion or other pleading filed by any party in any proceeding subsequent to the institution thereof shall be mailed by certified mail or otherwise delivered by the party filing the same to every other party or record. If any party has appeared in the proceeding by attorney or other representative authorized under these rules to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the Hearing Officer striking the protest, reply, answer, motion or other pleading from the record.

(b) *Certificate of Service:* A certificate by the party, attorney or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such evidence. The following form of certificate will be sufficient in this connection: 'I hereby certify that I have this _____ day of _____, 19____, served copies of the foregoing pleading upon all other parties of record to this proceeding, by (here state the manner of service). Signature.'

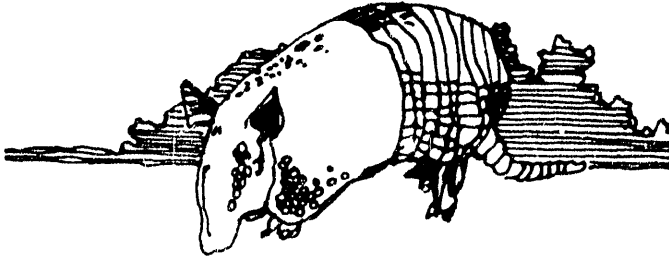
.100. *Conduct and Decorum.* Every party, witness, attorney or other representative shall comport himself in all proceedings with proper dignity, courtesy and respect for the Agency, the Commissioner, the Hearing Officer, the Board, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of party shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

.110. *Classification of Parties.* Parties to proceedings before the Agency are petitioners, respondents and intervenors. Regardless of errors as to designations in their pleadings, the parties shall be accorded their true status in the proceeding.

.120. *Parties in Interest.* Any party in interest may appear in any proceeding before the Agency. All appearances shall be subject to a motion to strike upon the showing that the party has no judiciable or administratively cognizable interest in the proceeding. Any person, public official, or Department of the State of Texas or any of its political subdivisions, or any civil or trade organization shall be permitted to intervene in support of or opposition to all or part of the relief sought in any contested proceeding by filing at least ten (10) days in advance of the hearing date, a petition in intervention showing its interest and the basis for its position in the case and at the hearing may present any relevant and proper testimony and evidence bearing upon the issues involved in the particular proceeding. In all proceedings the Agency is a party in interest.

.130. *Appearances.* Any party may appear and be represented by an attorney-at-law authorized to practice law before the Supreme Court of the State of Texas. Any person may appear on his own behalf, or by a *bona fide* full-time employee or by an elected or appointed officer of a governmental agency. A corporation, partnership or association may appear and be represented by any *bona fide* officer, partner or full-time employee. The Hearing Officer may require any person appearing in a representative capacity to provide such evidence of his authority as the Hearing Officer may deem necessary.

.140. *Classification of Pleadings.* Pleadings filed with the Agency in contested cases shall be petitions, answers, replies, exceptions, motions and notices of hearing.



Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

.150. Form and Content of Pleadings. Type-written or printed: All pleadings and briefs filed with the Department shall be written, type-written or printed upon paper 8 1/2 inches wide and 14 inches or 11 inches long with an inside margin of at least one inch wide and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided that all copies are clear and permanently legible.

.160. Motions. Any motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefor. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be filed with the Hearing Officer who shall act upon the motion at the earliest practical time.

.170. Amendments. Amendments to any pleading offered within fourteen (14) days of the date set for the hearing or thereafter shall be permitted only after written consent of the Hearing Officer is obtained. Copies of all amendments, whenever filed, must be sent by the party offering the amendment to each party of record; and the Hearing Officer may, upon his own motion or the motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if the amendment materially alters the pleading on file.

.180. Incorporation by Reference of Agency Records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in those official files and records of the Agency which are public record. This rule shall not relieve any petitioner of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

.190. Prehearing Conference.

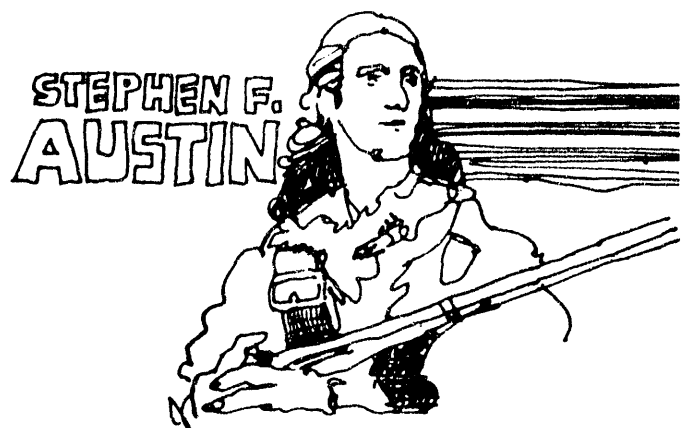
(a) In any proceeding, the Hearing Officer, on his own motion or the motion of a party or petitioner, may

direct the parties, their attorneys or representatives to appear before him at a specific time and place for a conference prior to the hearing for the purpose of formulating issues and considering

- (1) the simplification of issues;
- (2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by any party of matters of public record, to the end of avoiding the unnecessary introduction of proof;
- (3) the procedure at hearing;
- (4) the limitation, where possible, of the number of witnesses;
- (5) such other matters as may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of such issues as in dispute.

(b) Action taken at the conference shall be recorded in an appropriate manner by the Hearing Officer, unless the parties enter into a written agreement approved by him.

.200. Motions for Continuance. Hearings may be continued on the Agency's own motion upon a motion for continuance filed by a party not less than five (5) days prior to the designated date that the matter is to be heard. The party moving for a continuance must do so in writing and demonstrate good cause for the continuance. Copies of motions for continuance must be sent to all parties of record or their attorneys. In the event a continuance is ordered, the Hearing Officer shall promptly send notice of said continuance, such notice setting a new date for the hearing. The Hearing Officer need not hold a hearing on the motion for continuance. If a hearing cannot be held on the date for which it was set because a previously scheduled hearing is still in progress, no formal order for continuance shall be necessary. In such event, the parties and Agency shall cooperate in holding the delayed hearing on the earliest possible date.



.210. Place and Nature of Hearing. All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the Commissioner shall designate another place of hearing in the interest of the public.

Issued in Austin, Texas, on December 30, 1976.

Doc. No. 760061 M. L. Brockette
Commissioner
Texas Education Agency

Proposed Date of Adoption: February 14, 1976

For copies of this document, please call (512) 475-4123.



Hearings of Appeals to Commissioner 226.71.02

The State Board of Education is proposing to adopt Rule 226.71.02.010 through 226.71.02.180 inclusive, setting forth the orderly process for Hearings and/or Appeals before the Commissioner and the State Board of Education. These rules became effective January 1, 1976 as emergency rules. The effectiveness of the emergency rules will expire with the effective date of these rules twenty (20) days after they have been published as adopted.

Public comment on the proposed amendments to Rule 226.71.02.010 through 226.71.02.180 inclusive is invited. Comments may be submitted by telephoning the office of J. B. Morgan, Associate Commissioner for Educational Policy Formulation at (512) 475-4789, or by writing to Dr. J. B. Morgan at 201 East 11th Street, Austin, Texas 78701.

These rules are promulgated under the authority of Article 6252-13a, Texas Civil Statutes.

.010. Presiding Officer.

(a) Hearings will be conducted by a **Hearing Officer, who shall have the authority to administer oaths, to ex-**

amine witnesses, to rule on motions, and to rule upon admissibility of evidence and amendments to pleadings. He shall have the authority to recess any hearing from day to day.

(b) If the presiding Hearing Officer dies, becomes disabled, or withdraws or is removed from employment from the case at any time before the final decision thereof, the Commissioner may appoint another presiding Hearing Officer who may perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.

.020. Hearing Procedure. The rules as set forth under 226.71.01.010 of these rules shall govern the method and manner of appeals made to the Commissioner.

.030. Petition for Review. The aggrieved party shall file with the appropriate officer a pleading in accordance with 226.71.01.060. The pleading shall identify the ruling action or failure to act complained of and a copy of the pleading shall be sent by the petitioner to that body whose ruling, action or failure to act is the subject of the appeal.

.040. Notice and Hearing Date. The Hearing Officer shall cause notice to be given to the parties of the date and time of the hearing, which notice shall be given not more than thirty (30) days from the date on which the pleading is filed or within 30 days of the adoption of this rule, whichever is later.

.050. Order of Procedure.

(a) The petitioner shall present its case, the respondent or respondents shall next present its or their case and the petitioner shall then present its case in rebuttal. In those cases where there is more than one petitioner, the petitioner whose pleading was deemed officially filed first shall present its case and the petitioners next in line shall then proceed with the respondent or respondents next preceding and the petitioners presenting their case in rebuttal in the same order as their case in chief.

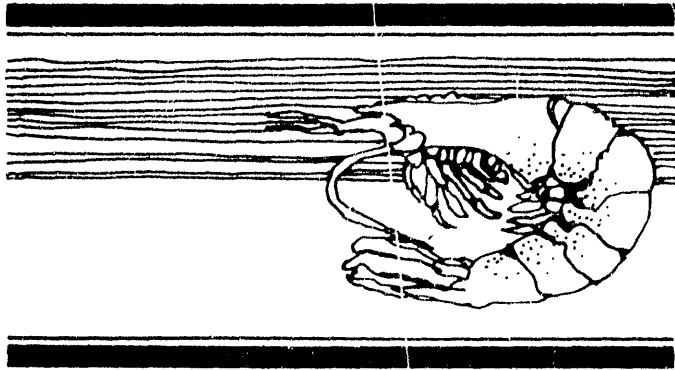
(b) The parties may be allowed, in the discretion of the Hearing Officer, to make opening and/or closing statements with the petitioner or petitioners going first.

(c) In any case where a party is represented by more than one attorney, the Hearing Officer shall require such party to designate a lead counsel who shall conduct the case for that party. The Hearing Officer may allow substitution of the lead counsel.

(d) All witnesses at a hearing shall testify under oath.

(e) A party may conduct cross-examination if required for a full and true disclosure of the facts.

.060. Corrections to the Transcript. Suggested corrections to the transcript of the record may be offered within ten (10) days after the transcript is filed in the proceeding,



unless the Hearing Officer shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter and the Hearing Officer. If suggested corrections are not objected to, the Hearing Officer will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the Hearing Officer, who shall then determine the manner in which the record shall be changed, if at all.

.070. Formal Exceptions. Formal exceptions to rulings of the Hearing Officer during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the Hearing Officer the action which he desires.

.080. Briefs. Briefs shall be filed only when requested or permitted by the Hearing Officer. They shall conform, as near as may be, to the rules herein provided for forms of pleadings. The points involved shall be concisely stated. The evidence in support of each point shall be briefly summarized, and the argument and authority shall be organized and directed to each point in a concise and logical manner. Briefs shall contain a table of contents and authorities.

.090. Admissibility in General. Rules of evidence shall be governed by Section 14, Article 6252-13a, Texas Civil Statutes.

100. Documentary Evidence; Official Notice. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, party shall be given an opportunity to compare the original and the copy. When numerous documents are offered, the Hearing Officer may limit those admitted to a number which are typical and representative, and may in his discretion require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the Hearing Officer shall require that all parties of record or their representatives be given the right to examine the document from which such abstracts were made.

In connection with any hearing held, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the Agency's specialized knowledge. Party shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noted, including any staff memoranda or data and they must be afforded an opportunity to contest the material so noted. The special skills or knowledge of the Agency and its staff may be utilized in evaluating the evidence.

.110. Limitation on Number of Witnesses. The Hearing Officer shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

.120. Exhibits.

(a) *Form:* Exhibits of documentary character shall be of such size as not unduly to encumber the files of the records of the Agency. There shall be a brief statement on the first sheet of exhibit of what the exhibit purports to show. Exhibits shall be limited to fact material and relevant to the issues involved in a particular proceeding.

(b) *Tender and service:* The original of each exhibit offered shall be tendered to the reporter for identification; one copy shall be furnished to the Hearing Officer and one copy to each other party of record or his attorney or representative.

(c) *Excluded Exhibit:* In the event an exhibit has been identified, objected to and excluded, the Hearing Officer shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the Hearing Officer with his ruling, and shall be included in the record for the purpose of only preserving the exception.

(d) *After Hearing:* Unless specifically directed by the Hearing Officer or by the Commissioner, no exhibit will be permitted to be filed in any proceeding after conclusion of the hearing, with service of copies of the late-filed exhibit served on all parties of record.

.130. Offer of Proof. When testimony on direct examination is excluded by ruling of the Hearing Officer, the party offering such evidence shall be permitted to make an offer of proof by eliciting from the witness said testimony to be placed in a bill of exception and such offer of proof shall be sufficient to preserve the point for review. Alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

140. Discovery; Depositions. Following written requests by a party, the Commissioner or any Hearing Of-

ficer may issue a commission addressed to officers authorized by statute to take a deposition of a witness. Such commission shall be issued only after a showing of good cause and deposit of sums sufficient to ensure payment of expenses incident to the deposition. The use of any deposition in any proceeding shall be governed by the Administrative Procedure and Texas Register Act.

.150. Subpoenas. Following written request by a party or on his own motion:

(a) Subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a pending proceeding may be issued by the Commissioner, or, during the course of a pendency of a hearing, by a commission representative of the Agency at the direction of the Hearing Officer.

(b) Motions for subpoenas to compel the production of books, papers, accounts or documents shall be addressed to the Commissioner or Hearing Officer, shall be verified and shall specify as nearly as possible the books, papers, accounts or documents desired in the material and relevant facts to be proved by them. If the matter sought is relevant, material and necessary and will not result in harassment, imposition, or undue inconvenience or expense to the witnesses to be required to produce the same, the Commissioner, or a commissioned representative of the Agency at the direction of the Hearing Officer, may issue a subpoena, compelling production of books, papers, accounts or documents as deemed necessary.

(c) Such subpoena shall be issued only after a showing of good cause and deposit of sums sufficient to ensure payment of expenses incident to the subpoenas. Payment of witnesses fee shall be made in a manner prescribed in the Administrative Procedure and Texas Register Act.

.160. Proposal for Decision. If in a contested case the Commissioner has not heard the case or read the record, the decision, if adverse to a party other than the Agency, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the Commissioner. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this paragraph.

.170. Filing of Exceptions and Replies.

(a) Any party of record may, within twenty (20) days after the date of service of the Hearing Officer's proposal for decision, file exceptions to the proposal for decision, and replies to such exceptions may be filed within fifteen (15) days after the date for filing of such exceptions.

A request for extension of time within which to file exceptions or replies shall be filed with the Hearing Officer, and a copy thereof shall be served on all other parties of record by the party making such request. The Hearing Officer shall promptly notify the parties of his action upon the same and shall allow additional time only in extraordinary circumstances where the interests of justice so require.

(b) Exceptions and replies on a proposal for decision shall conform as near as may be to the rules herein provided for form of pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity and such evidence in the argument shall be grouped under the exceptions to which they relate.

.180. Motions for Rehearing.

(a) Prior to the entry of his order, if the Commissioner concludes that substantial errors of procedure or the exclusion of evidence have so affected the record as to render it impractical to determine the case justly and fairly upon the record, he may order a rehearing.

(b) Unless extension or reduction be granted under Part C below, the times prescribed in this Part B shall control. If a party wishes to file a motion for rehearing, it must be filed with the Commissioner within fifteen (15) days after the date of rendition of a final decision or order. Replies to a motion for rehearing, if any, must be filed with the Commissioner within twenty-five (25) days after the date of rendition of the final decision or order. A motion for a rehearing is not a prerequisite to an appeal before the State Board of Education.

(c) The Commissioner may by written order extend the period of time for filing the motion for rehearing and replies, except that an extension may not extend the period for the Commissioner's action on the motion for rehearing beyond sixty (60) days after the date of rendition of his final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, sixty (60) days after the date of the final decision or order. The parties may by agreement with the approval of the Commissioner reduce any of the times provided in this rule.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760062 M. L. Brockett
Commissioner
Texas Education Agency

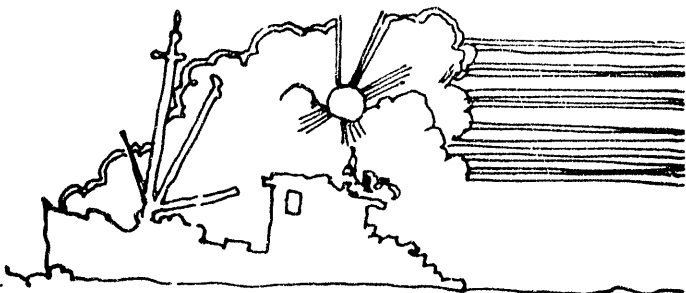
Proposed Date of Adoption: February 14, 1976

For copies of this document, please call (512) 475-4123.

Hearings and Appeals 226.71.03

The State Board of Education is proposing to adopt Rule 226.71.03.010 through 226.71.03.050 inclusive, setting forth the orderly process for Hearings and/or Appeals before the Commissioner and the State Board of Education. These rules became effective January 1, 1976 as emergency rules. The effectiveness of the emergency rules will expire with the effective date of these rules twenty (20) days after they have been published as adopted.

Public comment on the proposed amendments to Rule 226.71.03.010 through 226.71.03.050 inclusive is invited. Comments may be submitted by telephoning the office of J. B. Morgan, Associate Commissioner for Educational Policy Formulation at (512) 475-4789, or by writing to Dr. J. B. Morgan at 201 East 11th Street, Austin, Texas 78701.



These rules are promulgated under the authority of Article 6252-13a, Texas Civil Statutes.

.010. Procedure for Appeal. Any party who has been aggrieved by a decision of the Commissioner may appeal that decision to the State Board of Education.

(a) The aggrieved party or petitioner must file an appeal with the Commissioner within thirty (30) days from the date of his decision, or of the motion for rehearing, if any, is overruled by the Commissioner, or, if no action was taken by the Commissioner, from the date the motion for rehearing was overruled by operation of law or, if party does not file a motion for a rehearing before the Commissioner, 30 days from the date of his decision.

(b) A copy of the appeal request shall be sent to all parties of record before the Commissioner as provided in Section 71.01.

(c) The record of appeal to the Board shall consist of the following:

- (1) the written record made before the Commissioner;
- (2) all exhibits, petitions, answers, briefs, written arguments and documentary evidence presented at the hearing before the Commissioner;

(3) written order entered by the Commissioner along with all motions for rehearing, answers, and orders of the Commissioner, if any, overruling the motion for rehearing;

(4) the Commissioner shall certify the materials set forth above to the Board within 10 days of receipt of the notice of appeal.

.020. Notice. The Board shall, through the Commissioner, cause notice to be given to all Parties of record of the date and time for hearing, which shall be within forty-five (45) days from receipt of the notice of appeal.

.030. Testimony and Evidence.

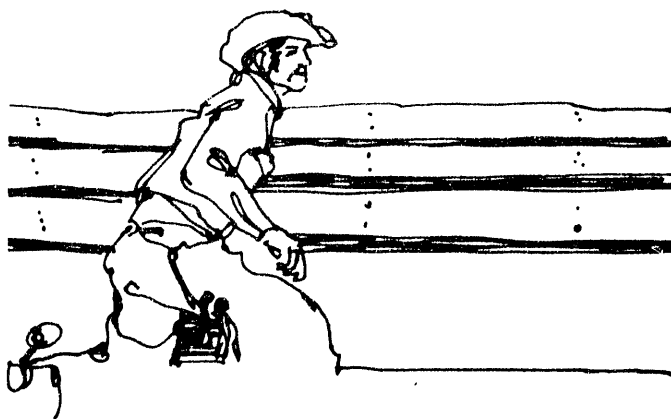
(a) At the hearing before the Board any interested party to the appeal may file a brief in at least five copies. Appeals to the Board shall be considered on the record, briefs and oral argument only. If the Petitioner desires to submit a brief, it must be submitted within fifteen (15) days from the date the notice of appeal was filed with the Commissioner and reply briefs must be submitted within thirty (30) days from the date the notice of appeal was filed with the Commissioner.

(b) Any party desiring to make oral argument before the Board must file a statement of intention to do same not less than ten (10) days prior to the date set for the hearing before the Board.

.040. Decisions. The decision of the State Board of Education shall be rendered within sixty (60) days from the date the hearing is closed. A copy of the decision shall be mailed to all parties of record.

.050. Rehearing.

(a) Motions for rehearing must be filed with the Board within ten (10) days after the date of the rendition of a final decision or order. Replies to a motion for rehearing must be filed with the Board within twenty (20) days after the rendition of the final decision or order, and the Board's



action on the motion must be taken within twenty-five (25) days of the date of the rendition of the final decision or order.

(b) The Commissioner may by written order extend the period of time for filing the motion for rehearing and replies, except that an extension may not extend the period for the Board's action on the motion for rehearing beyond sixty (60) days after the date of rendition of his final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, sixty (60) days after the date of the final decision or order.

(c) The Board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760063 M. L. Brockett
 Commissioner
 Texas Education Agency

Proposed Date of Adoption. February 14, 1976

For copies of this document, please call (512) 475-4123.

Official Advisory Groups and Procedures for Their Appointment 226.73.01

The State Board of Education is proposing to amend Rule 226.73.01.010, which delineates how official advisory groups, except those designated by a specific statute, are to be appointed by the Commissioner of Education with approval by the State Board of Education.

The proposed amendment adds language to the Board's policy section of the rule setting forth the Board's directions to the Commissioner on how it wishes the recommendations of the Commissioner to be presented.

Public comment on the proposed amendments to Rule 226.73.01.010 is invited. Comments may be submitted by telephoning the office of J. B. Morgan, Associate Commissioner for Educational Policy Formulation at (512) 475-4789, or by writing to Dr. J. B. Morgan at 201 East 11th Street, Austin, Texas 78701.

The amendments to Rule 226.73.01.010 are proposed under the authority of Section 11.25 (f), Texas Education Code.

.010. Official advisory groups are commissions, councils, or committees whose individual membership or participation is approved by the State Board of Education, the Commissioner of Education (Rule 226.12.02.020), or as designated by specific statute.

Each official advisory group recommended to the State Board of Education for approval shall, within its size, scope and objectives:

(a) **represent the public with respect to a range of school sizes and regional service center areas and shall not have more than one member from a congressional district unless the composition imposes membership related to a specific office held or other agency representation;**

(b) **no appointments to an advisory group shall be recommended by the Commissioner of Education unless it has the advice and consent of the State Board member representing the congressional district from which the candidate is being recommended;**

(c) **have a specifically defined purpose and set of objectives, define the length of service, the number of annual meetings and the expiration date of the advisory group unless it is sent otherwise by statute.**

One month prior to State Board of Education consideration of nominees by appearance on the preliminary agenda and notice of meeting appearing in the Texas Register, the Commissioner will circulate to the Board the proposed candidates meeting the criteria set forth in 7301.1, a biographical sketch of each nominee, and the specific use to be made of the information developed by the advisory group.

The Commissioner of Education shall administer regulations, as approved by the State Board of Education, regarding the appointment and use of advisory groups.

The appointments and use of advisory groups except as otherwise provided by applicable law are in accordance with the following provisions:

(a) Each advisory group member shall be a person selected because of his individual ability to offer sound and constructive advice. Only in cases where unusual justification exists will members of advisory groups be appointed *ex officio*. Each advisory group, unless otherwise directed by law, may have one-fifth of its membership composed of members of the State Board of Education.

(b) Membership of all advisory groups, except those established to serve exclusively the responsibility of the State Board of Education (Example: Investment Advisory Committee) and Board members who serve on advisory groups, shall be recommended by the Commissioner of Education and confirmed by the Board. Membership of advisory groups to serve the Board exclusively and Board members of all committees shall be recommended by the chairman and confirmed by the Board.

(c) The State Board of Education shall authorize each advisory group prior to its establishment and shall determine, with the advice of the Commissioner of Education, its tenure. A continuing advisory group shall have

membership appointed for three-year terms, subject to one reappointment, staggered so that the terms of one-third of the advisory group membership shall expire each year. Membership on a temporary advisory group shall be appointed for the duration of their designated task.

(d) Membership of an advisory group shall not exceed fifteen members, including State Board of Education members, unless unusual needs as determined by the Board require larger representation.

(e) Special temporary committees to assist the Board of Examiners for Teacher Education shall consist of three to five members of that board, one State Board of Education member, and not more than five additional members.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760054 M. L. Brockette
 Commissioner
 Texas Education Agency

Proposed Date of Adoption: February 14, 1976

For copies of this document, please call (512) 475-4123.



Designation of a Board for the Texas School for the Blind 226.91.04.010

The State Board of Education is proposing to adopt Rule 226.91.04.010, setting forth the method for appointing from its membership five (5) members who will constitute a local Board for the Texas School for the Blind. This rule becomes effective January 10, 1976 as an emergency rule. The effectiveness of the emergency rule will expire with the effective date of this rule twenty (20) days after it has been published as adopted.

Public comment on the proposed amendments to Rule 226.91.04.010 is invited. Comments may be submitted by telephoning the office of J. B. Morgan, Associate Commissioner for Educational Policy Formulation, at (512) 475-4789, or by writing to Dr. J. B. Morgan at 201 East 11th Street, Austin, Texas 78701.

This rule is promulgated under the authority of H.B. 1673, Acts of the Sixty-fourth Legislature, 1975.

.010. The State Board of Education shall designate from its membership a five-member board to serve in accordance with law as the Board of the Texas School for the Blind.

The first five members who volunteer publicly in a State Board of Education meeting to serve on the Board of the Texas School for the Blind shall be designated. Annual designation shall be at the January meeting of the State Board of Education. However, a vacancy on the Board of the Texas School for the Blind may be filled at any official meeting of the State Board of Education and when one of its members has appropriately volunteered to serve on the Board of the Texas School for the Blind.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760057 M. L. Brockette
 Commissioner
 Texas Education Agency

Proposed Date of Adoption: February 14, 1976

For copies of this document, please call (512) 475-4123.

Texas Water Quality Board Private Sewage Facility Regulations--Lake Bob Sandlin 130.12.19

The Texas Water Quality Board is proposing to adopt an Order under authority of Section 21.083 of the Texas Water Code, V.A.T.S., and Section 625 of the Rules of the Texas Water Quality Board. The proposed Order contains regulations regarding the installation of private sewage facilities, including septic tanks, in the area surrounding and adjacent to Lake Bob Sandlin (presently under construction) in Titus, Franklin, Camp and Wood Counties. The proposed regulations will require all new private sewage facilities to be licensed and to be constructed in accordance with "A Guide to the Disposal of Household Sewage" published by the Texas Department of Health Resources.

Any comments concerning this matter may be sent to Joe O'Neal, Attorney, Texas Water Quality Board, P. O. Box 13246, Capitol Station, Austin, Texas 78711 or by telephoning (512) 475-7851. The water to be impounded

in Lake Bob Sandlin is projected to be of a good quality and will be used for water supply as well as for recreational purposes. Both of these purposes require maintenance of water quality in Lake Bob Sandlin equal to, or in excess of, the Water Quality Standards as adopted by the Texas Water Quality Board.

Among the potential sources of pollution which must be controlled in order to maintain these standards of water quality is sewage from subdivisions, individual dwellings, motels, marinas, and other developments surrounding the reservoir. Sewage discharged into organized disposal systems is regulated through the permit system of the Board; therefore, this order is concerned with the control of sewage not discharged into organized disposal systems. Sewage not discharged into organized disposal systems is of special concern because a number of the areas surrounding Lake Bob Sandlin are expected to rapidly increase in population density and become closely developed suburban areas where soil conditions are not fully conducive to the use of private sewage facilities.

.001. Definitions.

(a) "District" means the Titus County Fresh Water Supply District No. 1.

(b) "Board" means the Texas Water Quality Board.

(c) "Executive Director" means the Executive Director of the Texas Water Quality Board.

(d) "Lake Bob Sandlin" means the reservoir to be located in Titus, Franklin, Wood, and Camp Counties of Texas created by the construction of the Fort Sherman Dam on Big Cypress Creek.

(e) "Organized disposal system" means any system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of the permit from the Texas Water Quality Board.

(f) "Private sewage facilities" means all facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the Board.

(g) "Sewage" means waterborne human or other domestic waste.

(h) "Subdivision" means

(1) a subdivision which has been platted and recorded with the county clerk of the county or counties in which the land lies, or which is required by statute to be so platted and recorded; or

(2) any ten (10) or more adjoining lots or tracts, each of which is less than one (1) acre in size.

(i) "MSL" is the abbreviation for Mean Sea Level.

.002. *Regulated Area.* The Regulated Area is the area for which the regulation applies. This area is defined as all the area in Lake Bob Sandlin watershed bounded by a line parallel to and 2,000 feet from 337.50 foot MSL line (including the lake bed) measured horizontally away from the reservoir.

.003. *Regulations Controlling the Discharge of Sewage Within the Regulated Area.* All sewage disposal within the Regulated Area shall be in accordance with one of the following types of authorization:

(a) Sewage discharged into an organized waste disposal system or other facility operating under a valid permit issued by the Board;

(b) Sewage discharged into private sewage facility licensed in accordance with the regulations contained in this order; or, sewage discharged into an alternate type of private sewage facility approved by the Texas Department of Health Resources and licensed by the District.

(c) Sewage discharged into a private sewage facility registered in accordance with the terms and conditions of this order.

.004. Licensing Functions.

(a) The Titus County Fresh Water Supply District No. 1 is designated by the Board to perform all of the licensing and registration functions of this order.

(1) The District shall have the following powers:

i. To make reasonable inspections of all private sewage facilities located or to be located within the area covered by this order; and

ii. To collect all fees approved by the Board necessary to recover all the costs incurred in meeting the requirements of this order.

(2) The District shall have the following responsibilities:

i. To make annual reports to the Board on all actions taken concerning this order; and

ii. To perform all the duties necessary to meet the requirements of this order.

(b) Upon a showing of necessity, the Board may assume all of the powers and responsibilities delegated to the Authority by this order.

.005. Licensing Requirements for New Private Sewage Facilities

(a) New private sewage facilities, or existing private sewage facilities which are substantially or materially altered, to be located within the boundaries of the Regulated Area, or within an existing subdivision in the Regulated Area must meet the following requirements:

(1) A license must be obtained for the use of these facilities from the Authority; and

(2) The lot or tract in question must be large enough, considering soil and drainage conditions and anticipated waste loading, to permit the use of a private sewage facility without causing water pollution, nuisance conditions, or endangerment to public health.

(b) All private sewage facilities to be installed or constructed after the effective date of this order must meet the minimum standards as stated in the latest edition of "A Guide to the Disposal of Household Sewage",

published by the Texas Department of Health Resources which is available from the Titus County Fresh Water Supply District No. 1.

(c) A new subdivision to be developed within the Regulated Area after the effective date of this order which utilizes private sewage facilities must meet the following requirements:

(1) A license must be obtained from the District for each private sewage facility; and

(2) Each lot or tract in the subdivision must be at least 20,000 square feet in size.

(d) Terms of Licenses for New Private Sewage Facilities.

(1) Any license issued under the authority of this order will be transferred to a succeeding owner and such license will continue in existence for the unexpired term of the license provided the new owner applies to the District, and provided there is no significant change in amount or quality of waste to be placed in the private sewage facility. The District will charge a transfer fee whenever a license is transferred to a succeeding owner.

(2) Application forms for licenses may be obtained from the District. In order to initiate an application for a license, the completed application form, together with the appropriate fee, shall be filed with the District.

(3) The District will perform as soon as practicable such inspections and tests as may be deemed necessary.

(4) Upon a finding by the District that use of the private sewage facility will not cause pollution or injury to the public health and is not in conflict with the terms and regulations of this order:

i. a license effective for a term of five (5) years will be issued. At the end of five (5) years, the system will be reinspected and an inspection fee assessed; and

ii. a new license issued under the above terms may be renewed for successive terms of five (5) years.

(5) Upon a finding by the District that the private sewage facility will not be licensed, the applicant shall be notified in writing of that finding and of the reasons which prevent licensing.

.006. Approval of Subdivision Plans for Private Sewage Facilities.

(a) Any developer or other interested person desiring to create a subdivision using private sewage facilities must obtain approval from the District of the plans for sewage disposal. The party must fulfill the following requirements:

(1) An application for approval of the subdivision sewage disposal plan and appropriate filing fee shall be submitted to the District.

(2) The developer shall inform each prospective buyer:

i. That the subdivision is subject to all of the terms and conditions of this order.

ii. That a license will be required for any private sewage facility constructed in the subdivision; and

iii. That a sewage disposal plan has been filed for the subdivision and that the areas suitable for private sewage facilities have been defined.

(3) If investigation pursuant to this section reveals that a lot is not suitable for use of private sewage facilities, the prospective buyer shall be so notified.

(b) The District will perform necessary tests and inspections to determine whether the subdivision can be served with private sewage facilities. By agreement between the District and the developer, all or part of the tests may be performed by an engineering firm or soils testing laboratory approved by the District or of recognized ability. The District will notify the developer of the findings of its examination and will point out any deficiencies in the plan for sewage disposal. Specifically, the District will notify the developer of any areas not suitable for the use of private sewage facilities and whether the proposed developmental density is consistent with the use of private sewage facilities. Approval of a subdivision plan for disposal does not constitute a license for a specific private sewage facility. An approved plan is, however, a prerequisite for obtaining a private sewage facility license in a subdivision.

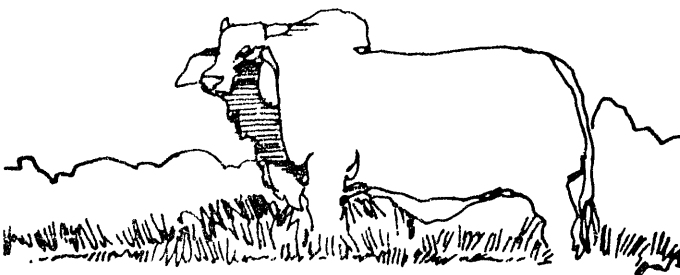
.007. Registration Requirements for Existing Private Sewage Facilities.

(a) Every private sewage facility existing within the Regulated Area on the effective date of this order as defined in .011 below, will be exempt from the licensing provisions of this order if the facility is registered with the District within one (1) year from the effective date of this order.

(b) Terms of Registration for Existing Private Sewage Facilities:

(1) Application forms for registration may be obtained from the District. In order to initiate an application for a registration, the completed application form, together with the appropriate fee, shall be filed with the District.

(2) The District will perform as soon as practica-



ble such inspections and tests as may be deemed necessary.

(3) Upon a finding by the District that the use of the private sewage facility is not causing pollution, nuisance or injury to the public health and is not in direct conflict with the terms and regulations contained in this order, the District will issue a registration certificate for the private sewage facility.

(4) An existing private sewage facility which is substantially altered or modified will be subject to Section .005 of this order as if it constituted a new private sewage facility.

(5) A registration issued under the authority of this order will be transferred to a succeeding owner provided the new owner applies to the District and pays the appropriate transfer fee.

(6) A registration will be effective for a term of five (5) years. At the end of five (5) years, the system will be reinspected.

(7) A new registration under the above terms may be renewed for successive terms of five (5) years.

(c) Registration in accordance with this order does not bar any action to abate a nuisance as defined in Article 4477-1 (V.T.C.S.). If a system in existence before the effective date of this order is found to be malfunctioning, the District shall require licensing in accordance with Section .005.

.008. Connection of Private Sewage Facility to Organized Waste Collection, Treatment and Disposal Systems. In order to implement the stated policy of the Legislature and the Board that the development and use of organized waste collection, treatment, and/or disposal systems should be encouraged to meet the needs of the citizens of the State, and to prevent pollution and maintain and enhance the quality of the water in the State, the Board makes the following requirements:

(a) No license shall be issued for any private sewage facility when any part of the facility is closer than 300 feet in horizontal distance to an organized waste collection, treatment, and disposal system; rather, the facility shall be connected to the organized system whenever legally possible.

(b) Whenever an organized waste collection, treatment, and disposal system is developed to within 300 feet in horizontal distance from any part of a private sewage facility, licensed or not, that facility shall be connected to the organized system whenever legally possible.

.009. Terms and Conditions for Granting of Exceptions. The Board intends that the regulations contained in the order be enforced but realizes that certain individual situations may require the granting of an exception to the requirements contained in the order so that hardships may be avoided. Therefore, the following terms and conditions are established:

(a) Any person desiring an exception shall file an application with the District for its analysis of the specific nature of the situation.

(b) The District shall review the application and issue a statement either granting or denying the application. When an application is denied, the statement shall set out the reasons for the District's decision and may also set out what corrective measures, if any, could be undertaken to achieve licensure.

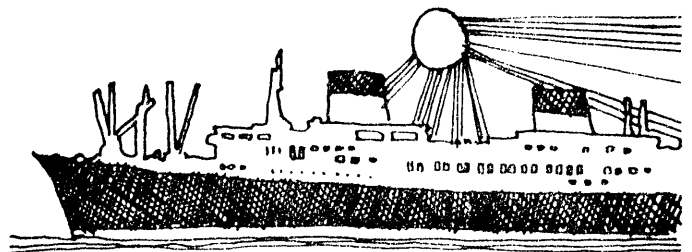
.010. Terms and Conditions for Appeal to the Executive Director and to the Texas Water Quality Board. Any person aggrieved by an action or decision of the District may appeal to the Executive Director and then to the Board if the following terms and conditions are met:

(a) All of the appropriate steps required of the aggrieved persons by the terms and conditions of this order have been met; and

(b) The aggrieved person has made a conscientious effort to resolve his problem with the District.

.011. Effective Date. This order shall become effective upon the execution by the District and the Board of a cooperative agreement pursuant to Chapter 21.355 of the Texas Water Code providing for the performance by the District of the water quality management and inspection functions delegated to the district under this order.

.012. License Fees. License fees, inspection fees, registration fees, transfer fees and renewal fees shall be in accordance with a fee schedule established by the District and approved by the Texas Water Quality Board. These fees shall be paid to and collected by the District so long as the District remains the delegatee of the Texas Water Quality Board for the purposes and functions specified in this order. The establishment of a fee schedule does not impair or prohibit the imposition of reasonable charges by the District for special services performed by the District at the request of the applicant in connection with presentation of an application and collection of required data. Percolation tests and other examinations will be performed by the District on a cost basis. These tests may also be performed by a registered engineer or a registered sanitarian.



.013. Enforcement of this Order.

(a) Criminal Penalty (Section 21.5531, Texas Water Code:

(1) A person who violates any provision of this order is guilty of a misdemeanor and on conviction is punishable by a fine of not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00). Each day that a violation occurs constitutes a separate offense.

(2) Jurisdiction for prosecution of a suit under this section is in the Justice of the Peace Courts.

(3) Venue for prosecution of a suit under this section is in the Justice of the Peace Precinct in which the violation is alleged to have occurred.

(b) Civil Penalty. A person who violates any provision of this order is subject to a civil penalty for each act of violation and for each day of violation, to be recovered as provided in Chapter 21 of the Texas Water Code.

.014. Saving Clause. If any provision of this order or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the order and of the application of such provision to other persons and circumstances shall not be affected thereby.

Issued in Austin, Texas, on January 2, 1976.

Doc. No. 760098 **James Showen**
 Director, Hearings Division
 Texas Water Quality Board

Proposed Date of Adoption: February 8, 1976

For copies of this document, please call (512) 475-2651.

tions regarding the installation of private sewage facilities, including septic tanks, in the area of the Guadalupe River and its tributaries (approximately 1500 feet on both sides) in Kerr County. The proposed regulations will require all new private sewage facilities to be licensed and to be constructed in accordance with "A Guide to the Disposal of Household Sewage" published by the Texas Department of Health Resources.

A public hearing will be held on Wednesday, January 14, 1976 at 9:30 a.m. in the Meeting Room of the Butt-Holdsworth Memorial Library, 505 Water Street, Kerrville, Texas.

Any comments concerning this matter may be sent to Joe O'Neal, Attorney, Texas Water Quality Board, P. O. Box 13246, Capitol Station, Austin, Texas 78711, or by telephoning (512) 475-7851.

At the present time, the water in the Guadalupe River in Kerr County is of a good quality and is highly valued for recreational use and for its aesthetically attractive condition. Therefore, the water quality in the Guadalupe River must be maintained equal to, or in excess of, the quality standards as adopted by the Texas Water Quality Board.

Among the potential sources of pollution which must be controlled in order to maintain a good quality of water is sewage from subdivisions and individual dwellings in the area of the Guadalupe River. Sewage discharged into organized disposal systems is regulated through the waste permit system of the Board. Therefore, this order is concerned with control of sewage not discharged into organized disposal systems. Sewage not discharged into organized disposal systems is of special concern because some of the areas near the Guadalupe River in Kerr County are subject to flooding, and some areas near the Guadalupe River are expected to rapidly increase in population density in areas where soil conditions are not fully conducive to the use of private sewage facilities.

.001. Definitions

(a) "Authority" means the Upper Guadalupe River Authority of Texas.

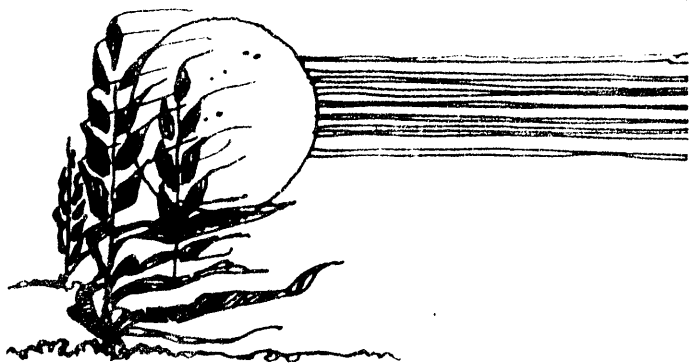
(b) "Board" means the Texas Water Quality Board.

(c) "Executive Director" means the Executive Director of the Texas Water Quality Board.

(d) "Guadalupe River" means that portion of the Guadalupe River and its tributaries which lie within Kerr County, Texas.

(e) "Organized disposal system" means any public system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a permit from the Texas Water Quality Board.

(f) "Private sewage facilities" means septic tanks and all other facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the Board.



Private Sewage Facility Regulations - Guadalupe River 130.12.20

The Texas Water Quality Board is proposing to adopt an order under authority of Section 21.083 of the Texas Water Code, V.A.T.S., and Section 625 of the Rules of the Texas Water Quality Board. The proposed order contains regula-

(g) "Sewage" means waterborne human or other domestic waste.

(h) "Subdivision" means

(1) a subdivision which has been platted and recorded with the county clerk of the county or counties in which the land lies, or which is required by statute to be so platted and recorded; or

(2) any ten (10) or more adjoining lots or tracts, each of which is less than one-half (1/2) acre in size.

(i) "Septic tank system" means a system for disposing of sewage through soil absorption and consisting of the following components: the house sewer, the septic tank, and the soil absorption field.

(j) "Soil absorption field" is that part of a septic tank system consisting of drainage pipe and surrounding permeable soil used for the subsurface disposal of septic tank effluent.

.002. *Restricted Area.* The Restricted Area is designated as all of that area within Kerr County which lies within the natural flood plain of the Guadalupe River and its tributaries as determined from the 100-year historical flood.

.003. *Water Quality Area.* The Water Quality Area is designated as that area immediately adjacent and contiguous to the Restricted Area and which is 1,000 feet from and parallel to the outer contour of the Restricted Area measured horizontally away from the river.

.004. *Regulated Area.* The Regulated Area is that area for which this order applies. This area is defined as all the area within the Restricted Area and Water Quality Area.

.005. *Sewage Facilities*

(a) *Restricted Area.* Effective the date of this Board Order, no part of any soil absorption field may be constructed within the Restricted Area. Septic tanks, parts of septic tank systems, holding tanks, holding tank systems, tile or concrete sanitary systems, sewer manholes, or other sewage facilities that are constructed in such a way that interchange of sewage with river water might be possible may not be constructed within the Restricted Area after the effective date of this order.

(b) *Water Quality Area.* Effective the date of this Board Order, no sewage facilities of any kind may be constructed within the Water Quality Area except those of organized disposal systems authorized by valid permits issued by the Texas Water Quality Board and septic tanks or other approved systems licensed in accordance with this order.

.006. *Discharge of Sewage.* All sewage disposal within the Regulated Area shall be in accordance with one of the following types of authorization:

(a) Sewage discharged into an organized waste disposal system or other facility operating under a valid permit issued by the Board;

(b) Sewage discharged into a private sewage facility licensed in accordance with the regulations contained in this order; or sewage discharged into an alternate type of private sewage facility approved by the Texas Department of Health Resources and licensed by the Authority; or

(c) Sewage discharged into a private sewage facility existing at the effective date of this order which is registered with the Authority and not causing pollution or injury to public health.

.007. *Licensing and Registration Functions.*

(a) The Upper Guadalupe River Authority of Texas is designated by the Board to perform all of the licensing and registration functions of this order.

(1) The Authority shall have the following powers:

i. To make reasonable inspections of all private sewage facilities located or to be located within the area covered by this order.

ii. To collect all fees approved by the Board necessary to recover all costs incurred in meeting the requirements of this order.

(2) The Authority shall have the following responsibilities:

i. To make annual reports to the Board on all actions taken concerning the Board;

ii. To perform all the duties necessary to meet the requirements of this order.

(b) Upon showing of necessity, the Board may assume all of the powers and responsibilities delegated to the Authority by this order.

.008. *Licensing Requirements for New Private Sewage Facilities.*

(a) New private sewage facilities, or existing private sewage facilities which are substantially or materially altered, to be located within the boundaries of the Regulated Area, or within a subdivision in the Regulated Area, must meet the following requirements:

(1) A license must be obtained for the use of these facilities from the Authority; and

(2) The lot or tract in question must be large enough, considering soil and drainage conditions and anticipated waste loading, to permit the use of a private sewage facility without causing water pollution, nuisance conditions, or endangerment to public health.

(b) All private sewage facilities to be installed or constructed after the effective date of this order must meet the minimum standards as stated in the latest edition of "A Guide to the Disposal of Household Sewage" published by the Texas Department of Health Resources which is available from the Upper Guadalupe River Authority.

(c) A new subdivision to be developed within the Regulated Area after the effective date of this order which

utilizes private sewage facilities must meet the following requirements:

- (1) A license must be obtained from the Authority for each private sewage facility.
- (2) The lot or tract in the subdivision must be at least one-half (1/2) acre in size.

(d) Terms of Licenses for New Private Sewage Facilities.

(1) Any license issued under the authority of this order will be transferred to a succeeding owner and such license will continue in existence for the unexpired term of the license provided the new owner applies to the Authority, and provided there is no significant change in the amount or quality of waste to be placed in the private sewage facility. The Authority will charge a transfer fee whenever a license is transferred to a succeeding owner.

(2) Application forms for licenses may be obtained from the Authority or from the office of the Authority. In order to initiate an application for a license, the completed application form, together with the appropriate fee, shall be filed with the Authority.

(3) The Authority will perform as soon as practicable such inspections and tests as may be deemed necessary.

(4) Upon a finding by the Authority that use of the private sewage facility will not cause pollution or injury to the public health and is not in conflict with the terms and regulations of this order:

- i. A license effective for a term of five (5) years will be issued. At the end of five (5) years, the system will be reinspected and an inspection fee assessed.
- ii. A new license issued under the above terms may be renewed for successive terms of five (5) years.

(5) Upon a finding by the Authority that the private sewage facility will not be licensed, the applicant shall be notified in writing of that finding and of the faults which prevent licensing.

.009. Approval of Subdivision Plans for Private Sewage Facilities.

(a) Any developer or other interested person desiring to create a subdivision using private sewage facilities must obtain approval from the Authority of his or her plans for sewage disposal. The party must fulfill the following requirements:

- (1) An application for approval of the subdivision sewage disposal plan and appropriate filing fee shall be submitted to the Authority.
- (2) The developer shall inform each prospective buyer:
 - i. That the subdivision is subject to all of the terms and conditions of this order.
 - ii. That a license will be required for any private sewage facility constructed in the subdivision.
 - iii. That a sewage disposal plan has been filed for the subdivision and that the areas suitable for private

sewage facilities have been defined.

(3) If investigation pursuant to this section reveals that a lot is not suitable for use of private sewage facilities, the prospective buyer shall be so notified.

(b) The Authority will perform necessary tests and inspections to determine whether the subdivision can be served with private sewage facilities. By agreement between the Authority and the developer, all or part of the tests may be performed by an engineering firm or soils testing laboratory approved by the Authority or of recognized ability. The authority will notify the developer of the findings of its examination and will point out any deficiencies in the plan for sewage disposal. Specifically, the Authority will notify the developer of any areas not suitable for the use of private sewage facilities and whether the proposed development density is consistent with the use of private sewage facilities. Approval of a subdivision plan for sewage disposal does not constitute a license for a specific private sewage facility. An approved plan is, however, a prerequisite for obtaining a private sewage facility license in the subdivision.

.010. Registration Requirements for Existing Private Sewage Facilities in the Regulated Area.

(a) Every private sewage facility existing within the Regulated Area on the effective date of this order will be exempt from the licensing provisions of this order provided:

- (1) The facility is registered with the Authority within one (1) year from the date of this order.
- (2) The system is not malfunctioning and is not causing pollution or injury to public health and the facility is not substantially or materially altered.

(b) The Authority will perform as soon as practicable such inspections and tests as may be deemed necessary.

(c) A registration will be effective for a term of five (5) years. At the end of five (5) years, the system will be reinspected.

(d) A registration issued under the authority of this order will be transferred to a succeeding owner provided the new owner applies to the Authority and pays the appropriate transfer fee.

(e) A new registration under the above terms may be renewed for successive terms of five (5) years.

.011. Connection of Private Sewage Facility to Organized Waste Collection, Treatment and Disposal Systems. In order to implement the stated policy of the legislature and the Board that the development and use of organized waste collection, treatment, and/or disposal systems should be encouraged to meet the needs of the citizens of the State and to prevent pollution and maintain and enhance the quality of the water in the State, the Board makes the following requirements:

(a) No license shall be issued for any private sewage facility when any part of the facility is closer than 300 feet in horizontal distance to an organized waste collection, treatment and disposal system; rather, the facility shall be connected to the organized system whenever legally possible.

(b) Whenever an organized waste collection, treatment and disposal system is developed to within 300 feet in horizontal distance from any part of a private sewage facility, licensed or not, that facility shall be connected to the organized system whenever legally possible.

.012. Term and Conditions for Granting of Exceptions. The Board intends that the regulations contained in the order be enforced but realizes that certain individual situations may require the granting of an exception to the requirements contained in the order so that hardships may be avoided. Therefore, the following terms and conditions are established:

(a) Any person desiring an exception shall file an application with the Authority for its analysis of the specific nature of the situation.

(b) The Authority shall review the application and issue a statement either granting or denying the application. When the application is denied, the statement shall set out the reasons for the Authority's decision and may also set out what corrective measures, if any, could be undertaken to achieve licensure.

.013. Terms and Conditions for Appeal to the Executive Director and the Board. Any person aggrieved by an action or decision of the Authority may appeal to the Executive Director and then to the Board if the following terms and conditions are met:

(a) All of the appropriate steps required of the aggrieved person by the terms of this order have been met.

(b) The aggrieved person has made a conscientious effort to resolve his problem with the Authority.

.014. Effective Date. This order shall become effective upon the execution by the Authority and the Board of a cooperative agreement pursuant to Chapter 21.355 of the Texas Water Code providing for the performance by the Authority of the water quality management and inspection functions delegated to the Authority under this order.

.015. License Fees. License fees, inspection fees, transfer fees and renewal fees will be in accordance with a fee schedule established by the Authority and approved by the Texas Water Quality Board. These fees shall be paid to and collected by the Authority so long as the Authority remains the delegatee of the Texas Water Quality Board for the purposes and functions specified in this order. The establishment of a fee schedule does not impair or prohibit the imposition of reasonable charges by the Authority for special services performed by the Authority at the request

of the applicant in connection with the presentation of an application and collection of required data. Percolation tests and other examinations will be performed by the Authority on a cost basis. These tests may also be performed by a registered engineer or a registered sanitarian.

.016. Enforcement of this Order.

(a) Criminal Penalty (Section 21.5531, Texas Water Code).

(1) A person who violates any provision of this order is guilty of a misdemeanor and on conviction is punishable by a fine of not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00). Each day that a violation occurs constitutes a separate offense.

(2) Jurisdiction for prosecution of a suit under this section is in the Justice of the Peace Courts.

(3) Venue for prosecution under this section is in the Justice of the Peace precinct in which the violation is alleged to have occurred.

(b) Civil Penalty. A person who violates any provision of this order is subject to a civil penalty for each act of violation and for each day of violation, to be recovered as provided in Chapter 21 of the Texas Water Code.

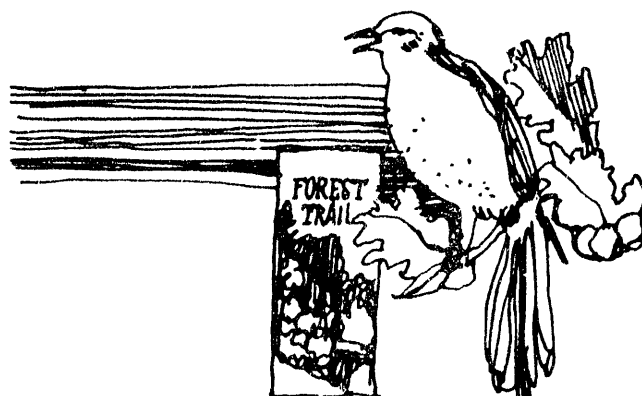
.017. Saving Clause. If any provision of this order or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the order and the application of such provision to other persons and circumstances shall not be affected thereby.

Issued in Austin, Texas, on January 2, 1976.

Doc. No. 760099 James Showen
Director, Hearings Division
Texas Water Quality Board

Proposed Date of Adoption: February 8, 1976

For copies of this document, please call (512) 475-2651.



ADOPTED RULES

78

Numbering System-- Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the category of rules to which the rule belongs. The third unit (two digits) indicates the subcategory of rules, if any, within the category. The fourth unit (three digits) indicates the individual rule.



State Department of Public Welfare Food Stamps 326.15.00

The following rule is promulgated under the authority of Article 695c, Texas Civil Statutes, and is adopted effective January 1, 1976, pursuant to federal requirements.

.015. The Department of Public Welfare adopts by reference the food stamp rules and appendix contained in Federal Register Document No. 75-32367, which appears at pages 55646-55656 of Volume 40, No. 231, and which amend 7 C.F.R. Part 271.

Issued in Austin, Texas, on December 31, 1975.

Doc. No. 760071 Raymond W. Vowell
 Commissioner
 State Department of Public
 Welfare

Proposed Date of Adoption: January 1, 1976

For copies of this document, please call (512) 475-4601.

Texas Advisory Commission on Intergovernmental Relations

Meeting

Notice is given that a meeting of the Texas Advisory Commission on Intergovernmental Relations will be held on Friday, January 9, 1976, at the Austin Hilton Inn, 6000 Middle Fiskville Road in Austin, beginning at 9 a.m.

The subjects of the meeting will be as follows:

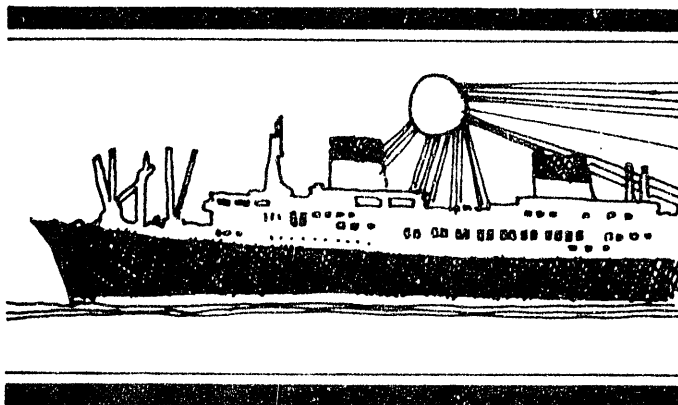
- (a) discussion of property tax policy and administration;
- (b) discussion of Commission activities and committee responsibilities for calendar 1976.

Additional information concerning this meeting may be obtained from the Texas Advisory Commission on Intergovernmental Relations, 622 Stephen F. Austin State Office Building, Austin, Texas 78711.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760103 James F. Ray
Executive Director
Texas Advisory Commission
on Intergovernmental
Relations

For further information, please call (512) 475-3728



Meetings

Notice is given that meetings of the Public Services, Community Development, Government Organization, and Public Finance Committees of the Texas Advisory Commission on Intergovernmental Relations will be held on Friday, January 9, 1976, at the Austin Hilton Inn, 6000 Middle Fiskville Road, Austin, beginning at 11 a.m.

Each committee will conduct an organizational meeting.

Additional information concerning these meetings may be obtained from the Texas Advisory Commission on Intergovernmental Relations, Room 622, Stephen F. Austin State Office Building, Austin, Texas 78701.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760102 James F. Ray
Executive Director
Texas Advisory Commission on
Intergovernmental Relations

For further information, please call (512) 475-3728.

Board of Architectural Examiners

Meeting

Notice is given that a meeting of the Board of Architectural Examiners will be held on Friday and Saturday, January 9 and 10, 1976, at Austin in 202 Richmond Building, 1411 West Avenue, beginning at 1:30 p.m. on January 9, and 9 a.m. on January 10. The subjects of the meeting will include hearings; reciprocal licensing; rules and regulations; election of officers; reinstatement; alleged violations; examinations; internship pilot program; other new business.

Additional information concerning this meeting may be obtained from Philip D. Creer, Board of Architectural Examiners, 1411 West Avenue, Austin, Texas 78701.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760096 Philip D. Creer
Executive Director
Board of Architectural
Examiners

For further information, please call (512) 475-2629.

Brazos River Authority Meeting

Notice is given that a meeting of the Lake Management Committee of the Board of Directors of the Brazos River Authority will be held on Friday, January 9, 1976, in the Lake Supervisor's office at Possum Kingdom Lake, beginning at 1 p.m.

The subjects of the meeting will be renewal of Possum Kingdom commercial leases; request for increase in area under commercial lease; request for hangar lease on Fox Hollow airstrip; assignment of commercial lease; request for extension of time for which area is reserved for future development; renewal of grazing leases; advertisement for bids on vacated cottage site lease; requests to divide and

assign portions of cottage site leases; approval of cottage site lease; approval of expenditures for Florida bass minnow ponds; review of effects of Federal Power Commission orders approving Recreational Use Plan; modification of lease forms; suggestions for possible septic tank licensing program at Possum Kingdom Lake; Lake Granbury matters; other matters which may be brought up by any director.

Additional information concerning this meeting may be obtained from Mike Bukala, Brazos River Authority, P.O. Box 7555, Waco, Texas 76710.

Issued in Austin, Texas, on January 1, 1976.

Doc. No. 760108

Central Texas Council of Governments

Meeting

Notice is given that a meeting of the EMS Task Force of the Central Texas Council of Governments will be held on Wednesday, January 14, 1976, at Little John's Restaurant, Interstate 35, Belton, beginning at 7 p. m.

The subject of the meeting will be a talk by Jim Robinson from the Texas Department of Health Resources on communications portion of plan.

Additional information concerning this meeting may be obtained from the Central Texas Council of Governments, Box 729, Belton, Texas 76513

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760053 David M. Bandy
 President
 Central Texas Council of
 Governments

For further information, please call (817) 939-1801.

Coastal Bend Council of Governments

Meeting

Notice is given that a joint meeting of the Executive Board of the Coastal Bend Council of Governments and the executive board of the Coastal Bend Health Planning Council will be held on Friday, January 9, 1976, at the CBCOG Conference Room, 4600 Parkdale Drive in Corpus Christi, beginning at 1:30 p.m.

The subjects of the meeting will be discussion of bylaws, articles of incorporation, board of directors, and applica-

tion for funding of the proposed South Texas Health Systems Agency.

Additional information concerning this meeting may be obtained from the Coastal Bend Council of Governments, International Airport, Corpus Christi, Texas 78410.

Issued in Austin, Texas, on January 1, 1976.

Doc. No. 760106

Texas Board of Corrections

Meeting

Notice is given that a meeting of the Texas Board of Corrections will be held on Monday, January 12, 1976, at Stephen F. Austin Hotel, Austin, Texas, beginning at 8 a.m.

The subjects of the meeting will be as follows:

- (a) Inmate affairs:
 - (1) activity summary:
 - i. educational programs,
 - ii. agency reports,
 - iii. medical report,
 - iv. chaplaincy program,
 - v. release programs;
 - (2) vocational and academic warehouse;
 - (3) deaths;
 - (4) statistical reports:
 - i. disciplinary,
 - ii. inmate strength,
 - iii. received-released;
 - (5) escapes;
 - (6) interviews with inmates;
- (b) Personnel:
 - (1) out-of-state travel;
 - (2) promotion board;
 - (3) training academy;
- (c) Business and budget:
 - (1) encumbrance statement;
 - (2) income statement;
 - (3) food cost analysis;
- (d) Legislation;
- (e) Agriculture: agricultural report;
- (f) Construction:
 - (1) progress report;
 - (2) authorization for construction and/or remodeling;
- (g) Industries: progress report;

- (h) Legal;
- (i) Division of Research and Development: activity report;
- (j) Miscellaneous:
 - (1) royalty and rental income;
 - (2) public affairs office report;
 - (3) donations:
 - i. Mr. Merle E. Huston,
 - ii. Mr. George Ballas,
 - iii. Houston Endowment, Inc.;
- (k) Windham School District:
 - (1) personnel:
 - i. employment,
 - ii. terminations,
 - iii. out-of-state travel;
 - (2) other: Textbook Committee Members; by-laws and procedures of the Windham School Advisory Committee; testing and evaluation; textbooks and supplies; vocational education; developmental education; curriculum; business affairs and financing; libraries; special projects; conferences and conventions; Phase IV; additional information.

Additional information concerning this meeting may be obtained from W. J. Estelle, Jr.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760044 W. J. Estelle, Jr.
 Director
 Texas Department of
 Corrections

For further information, please call (713) 295-6371

Texas Education Agency

Meeting

Notice is given that a meeting of various committees of the State Board of Education will be held on Thursday, January 8, 1976, at the Texas School for the Deaf, 1102 South Congress in Austin, beginning at 2:30 p.m., and on Friday, January 9, 1976, at 150 and 158 East Riverside Drive in Austin, beginning at 8:30 a.m. In preparation for a meeting of the State Board of Education on January 10, 1976 the following committees will be meeting: committee to perform local school board functions, Texas School for the Deaf; priorities; special education; educational personnel and review of policies; biennial budget and public school finance; vocational education; instructional resources; accountability, assessment, and evaluation; investment of permanent school fund. The complete agenda for the meeting is posted on the first floor in the East Wing of the Capitol Building.

Additional information concerning this meeting may be obtained from M.L. Brockette, Texas Education Agency, 201 E. 11th Street, Austin, Texas 78701

Issued in Austin, Texas, on December 31, 1975.

Doc. No 760070 M. L. Brockette
 Commissioner
 Texas Education Agency

For further information, please call (512) 475-3271.

Meeting

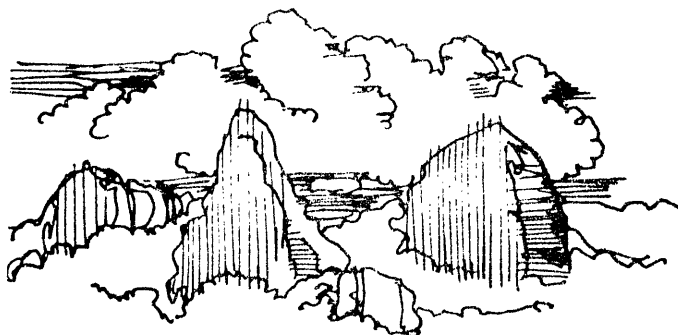
Notice is given that a meeting of the State Board of Education will be held on Saturday, January 10, 1976, at the Board Room, Riverside Square North Building, 150 East Riverside Drive, in Austin, beginning at 8:30 a.m. The Board will meet to consider certain appeals; recommendations of the Commissioner of Education; recommendations of the committees on priorities, special education, biennial budget and public school finance, vocational education, educational personnel and review of policies, and investment of permanent school fund; the report of the Commissioner of Education; the report of the Commissioner of Chairman of the Board; and Reports of the Committees. The complete agenda for the meeting is posted on the first floor in the East Wing of the Capitol Building.

The meeting will be held in accordance with the provisions of Article 6252-17, Texas Civil Statutes. Additional information concerning this meeting may be obtained from M.L. Brockette, Texas Education Agency, 201 E. 11th Street, Austin, Texas 78701.

Issued in Austin, Texas, on December 31, 1975.

Doc. No. 760069 M. L. Brockette
 Commissioner
 Texas Education Agency

For further information, please call (512) 475-3271



Governor's Office

Meeting

Notice is given that a meeting of the Texas Coordinating Commission for Health and Welfare Services of the Governor's Office will be held on Thursday, January 8, 1976, at the Speaker's Committee Room, State Capitol Building, Austin, beginning at 10:30 a.m.

The Commission will conduct an organizational meeting.

Additional information concerning this meeting may be obtained from Representative Tim Von Dohlen, P.O. Box 2910, Austin, Texas 78767.

Issued in Austin, Texas, on December 23, 1975.

Doc. No. 760117 Rep. Tim Von Dohlen
Chairman
Texas Coordinating
Commission for Health and
Welfare Services

For further information, please call (512) 475-3722



Texas Department of Health Resources

Meeting

Notice is given that a meeting of the Sanitarian Advisory Committee of the Texas Department of Health Resources will be held on Friday, January 9, 1976, in the second floor conference room at the Texas Department of Health Resources Building, 1100 West 49th Street, Austin, beginning at 1 p.m.

The subject of the meeting will be review of applications for registration as Professional Sanitarian.

Additional information concerning this meeting may be obtained from the Sanitarian Advisory Committee, Texas

Department of Health Resources, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on December 31, 1975.

Doc. No. 760110 Fratis L. Duff
Director
Texas Department of
Health Resources

For further information, please call (512) 454-3781.

Texas Historical Commission

Meeting

Notice is given that a meeting of the Texas Historical Commission will be held on Friday, January 9, 1976, at Bedivere and Gallahad Rooms, Red Carpet Inn at Beaumont, beginning at 1:30 p.m.

The subjects of the meeting will include: approval and designation of official Texas historical markers; financial report; chairman's report; executive director's report; director of programs' report; state archeologist's report; director of National Register Programs' report; director of research's report; director of museum services report; report on publications; report of best historical publication on a local or regional level.

Additional information concerning this meeting may be obtained from Truett Latimer, Texas Historical Commission, Box 12276, Capitol Station, Austin, Texas 78711.

Issued in Austin, Texas, on January 1, 1976.

Doc. No. 760111 Truett Latimer
Executive Director
Texas Historical Commission

For further information, please call (512) 475-3092.

Texas Parks and Wildlife Department

Meeting

Notice is given that a meeting of the Environmental Branch Fisheries Division of the Texas Parks and Wildlife Department will be held on Tuesday, January 13, 1975, at Austin in Room 100, John H. Reagan Building, 15th and Congress, beginning at 2 p.m.

The subject of the meeting will be the application of Val-Cap Marine Service, Inc., for a permit to perform maintenance dredging of the company's facility at Galveston Harbor.

Additional information concerning this meeting may be obtained from C.E. Sharp, Texas Parks and Wildlife Department, John H. Reagan Building, Austin, Texas. 475-4471.

Issued in Austin, Texas, on December 30, 1975.

Doc. No. 760097 Clayton T. Garrison
Executive Director
Texas Parks and Wildlife
Department

For further information, please call (512) 475-4471.

State Department of Public Welfare

Meeting

Notice is given that a meeting of the Board of Public Welfare and the Medical Care Advisory Committee of the State Department of Public Welfare will be held on Saturday, January 10, 1976, at Room 118, Stephen F. Austin Building in Austin, beginning at 9:30 a.m.

The subject of the joint meeting will be to discuss the problem of inadequate funding of purchased health services.

Additional information concerning this meeting may be obtained from William Woods, Department of Public Welfare, John H. Reagan Building, Austin, Texas 78701.

Issued in Austin, Texas, on January 2, 1976.

Doc. No. 760101 R. W. Vowell
Commissioner
State Department of Public
Welfare

For further information, please call (512) 475-6297.

Railroad Commission of Texas

Meeting

Notice is given that a meeting of the Railroad Commission of Texas will be held on Monday, January 12, 1976, at the Ernest O. Thompson Building, 10th and Colorado, in Austin, beginning at 9 a.m.

The meeting will be held to consider previously heard applications concerning oil and gas. A complete agenda for this meeting has been posted on the first floor of the East Wing of the Capitol Building, Austin, Texas.

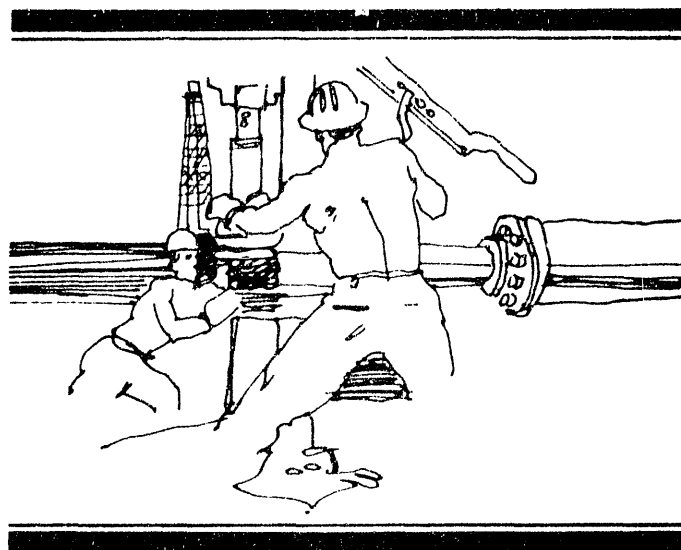
Additional information concerning this meeting may be

obtained from the Oil and Gas Division, Railroad Commission of Texas, Ernest O. Thompson Building, 10th and Colorado Streets, Austin, Texas 78701.

Issued in Austin, Texas, on December 29, 1975.

Doc. No. 760038 Elizabeth Mavropoulis
Secretary
Railroad Commission of Texas

For further information, please call (512) 475-4519



Hearing

Notice is given that a hearing of the Oil & Gas Division of the Railroad Commission of Texas will be held on Thursday, January 15, 1976, at the Austin Hilton in Austin, beginning at 10 a.m.

The subjects of the hearing will be the conservation and prevention of waste of crude petroleum oil and natural gas; the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude oil and/or natural gas; the purchase, sale, transportation, and handling of crude oil and natural gas and all products, by-products, and their derivatives in the state of Texas. The hearing will be held in accordance with the provisions of Article 6252-17, Texas Civil Statutes. Additional information concerning this hearing may be obtained from Bob Harris, Railroad Commission of Texas, 10th. & Colorado, Austin, Texas 78701.

Issued in Austin, Texas, on December 29, 1975.

Doc. No. 760039 Elizabeth Mavropoulis
Secretary
Railroad Commission of Texas

For further information, please call (512) 475-4519.

Tourist Development Agency Meeting

Notice is given that a meeting of the Texas Tourist Development Agency will be held on Friday, January 16, 1976, at the Holiday Inn, South Padre Island.

The subjects of the meeting will be as follows:

- (a) Status of fiscal 1976 budget;
- (b) Review of spring marketing plans;
- (c) Preliminary discussion of 1978-1979 budget request;
- (d) Critique of 1975 annual conference and selections of 1976 site;
- (e) Committee Reports.

Additional information concerning this meeting may be obtained from Frank Hildebrand, Box 12008, Capitol Station, Austin, Texas 78711.

Issued in Austin, Texas, on December 31, 1975.

Doc. No. 760043 Frank Hildebrand
Executive Director
Texas Tourist Development Agency

For further information, please call (512) 475-4326.

Texas Water Quality Board

Hearing

Notice is given that a hearing of the Hearings Division of the Texas Water Quality Board will be held on Wednesday, January 14, 1976, at Kerrville in the Meeting Room, Butt-Holdsworth Memorial Library, 505 Water Street, beginning at 9:30 a.m.

The hearing will be held to discuss proposed regulations regarding the use and installation of private sewerage facilities, including septic tanks, in the area of the Guadalupe River and its tributaries (approximately 1500 feet on both sides) in Kerr County. The hearing will be held under the authority of Section 21.083, Texas Water Code, and Section 625 of the Rules of the Texas Water Quality Board. The proposed regulations will require all new private sewerage facilities to be licensed and to be constructed in accordance with "A Guide to the Disposal of Household Sewage," published by the Texas Department of Health Resources. Copies of the proposed regulations are available at the office of the Upper Guadalupe

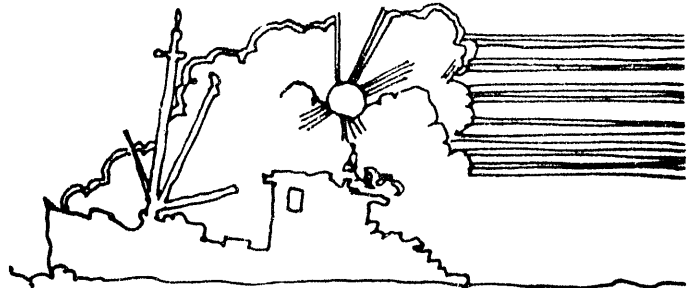
River Authority, Charles Schriener Bank Building, 741 Water Street, Kerrville, Texas.

Additional information concerning this hearing may be obtained by writing to Joe O'Neal, Attorney, Texas Water Quality Board, P.O. Box 13246, Capitol Station, Austin, Texas 78711.

Issued in Austin, Texas, on December 22, 1975.

Doc. No. 760042 William E. Berger
Staff Assistant
Texas Water Quality Board

For further information, please call (512) 475-2651.



Texas Water Rights Commission

Hearing

Notice is given that a hearing of the Texas Water Rights Commission will be held on Friday, January 9, 1976, at the Stephen F. Austin State Office Building, 1700 North Congress Avenue in Austin, beginning at 10 a.m.

The subjects of the hearing will be applications for various permits. The complete agenda for the hearing is posted on the first floor in the East Wing of the Capitol Building.

Additional information concerning this hearing may be obtained from Mary Ann Hefner, P.O. Box 13207, Austin, Texas 78711.

Issued in Austin, Texas, on December 22, 1975.

Doc. No. 760116 Mary Ann Hefner
Secretary
Texas Water Rights Commission

For further information, please call (512) 475-4514.

Meeting

Notice is given that a meeting of the Texas Water Rights Commission will be held on Monday, January 12, 1976, at the Stephen F. Austin State Office Building in Austin, beginning at 10 a.m.

The subjects of the meeting will include applications for various permits; examiners' reports on previously heard applications; notices of appeals; and applications for approval of bond issues. The complete agenda for the meeting is posted on the first floor in the East Wing of the Capitol Building.

Additional information concerning this meeting may be obtained from Mary Ann Hefner, P.O. Box 13207, Austin, Texas 78711.

Issued in Austin, Texas, on January 2, 1976.

Doc. No. 760112 Mary Ann Hefner
 Secretary
 Texas Water Rights Commission

For further information, please call (512) 475-4514.

Hearing

Notice is given that a meeting of the Texas Water Rights Commission will be held on Tuesday, January 20, 1976, in Austin at the Stephen F. Austin Building, Room 119, beginning at 10 a. m.

The subject of the hearing will be application for regular permit: Houston Lighting and Power Company, Colorado River Basin, Matagorda County, Texas.

Additional information concerning this hearing may be obtained from Mary Ann Hefner, Secretary, Texas Water Rights Commission, Austin, Texas.

Issued in Austin, Texas, on December 16, 1975.

Doc. No. 760031 Mary Ann Hefner
 Secretary
 Texas Water Rights Commission

For further information, please call (512) 475-4514.