



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

May 2, 1961

Honorable Bill Hollowell  
Chairman, State Affairs Committee  
House of Representatives  
Austin, Texas

Opinion No. WW-1045

Re: Constitutionality of House  
Bill 828 of the 57th Legis-  
lature, relating to licensing  
of clinical laboratories and  
clinical laboratory directors.

Dear Mr. Hollowell:

You have requested an opinion on the constitutional-  
ity of House Bill 828 of the 57th Legislature which provides  
for a licensing of clinical laboratories and clinical labora-  
tory directors through the Texas State Health Department.

A clinical laboratory and clinical laboratory direc-  
tor are defined in Section 2 of the Act as follows:

"(b) 'Clinical Laboratory' means  
any place, establishment or institution  
organized and operated for the practical  
application of one or more of the funda-  
mental sciences by the use of specialized  
apparatus, equipment and methods for the  
purpose of obtaining scientific data which  
may be used by a licensed physician as an  
aid in ascertaining the presence, progress  
and/or source of disease in human beings,  
or the state of health of an individual;  
provided, however, x-ray laboratories shall  
not be included in this definition.

"(c) 'Clinical Laboratory Director'  
means any person licensed under this chapter  
to engage in the direction of a clinical  
laboratory."

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Other sections of the Act make it unlawful to operate a clinical laboratory or act as a director of such unless duly licensed by the licensing agency, the State Health Department, and give to the Health Department certain authority in connection with the applications for and issuance of the licenses and the establishment of rules and regulations necessary for the proper administration of the provisions of the Act.

House Bill 828 contains but one subject which is expressed in its title and the body of the Bill conforms to the caption and is, therefore, in compliance with the provisions of Section 35 of Article III of the Constitution of Texas.

Section 31 of Article XVI of the Constitution of Texas provides:

"The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine."

In view of the provisions of Section 31 of Article XVI above quoted, the Legislature is not authorized to allow individuals to practice medicine without requiring such individuals to meet the requirements for license to practice medicine. Wilson v. State Board of Naturopathic Examiners, 298 S.W.2d 946 (Civ.App. 1957, error ref., n.r.e., cert.den., 355 U.S. 870, reh.den., 355 U.S. 920); Schlichting v. Texas State Board of Medical Examiners, 158 Tex. 279, 310 S.W.2d 557 (1958).

In view of the foregoing, the constitutionality of House Bill 828 is dependent on whether its provisions would authorize an individual licensed thereunder, to perform acts which constitute the practice of medicine as defined by Article 4510, Vernon's Civil Statutes and Article 741, Vernon's Penal Code.

In construing the provisions of the Medical Practice Act, it was held in F.W.B. Rockett, M.D. v. State Board of Medical Examiners, 287 S.W.2d 190 (Civ.App. 1956, error ref., n.r.e.):

". . . By the pleadings of appellant, his testimony, and the stipulations of the parties, it was conclusively established

that: Appellant was employed by Thomas Clinic for a salary of \$500 per month and he received no fees; the Clinic was owned by Ralph C. Thomas, who was not a medical doctor and no medical doctor owned any interest in the clinic; appellant performed medical services for the clinic and the fees for such services were collected by the clinic. Such conduct on the part of appellant was in effect 'permitting, or allowing, another to use his license or certificate to practice medicine in this State, for the purpose of treating, or offering to treat, sick, injured, or afflicted human beings', which conduct is prohibited by the provisions of Section 12 of Art. 4505, Vernon's Ann.Civ.Stats., and is made a ground for the forfeiture of a license to practice medicine by the provisions of Art. 4506, Vernon's Ann.Civ.Stats. See Section 5, Art. 4505."

See also Kee v. Baber, 157 Tex. 387, 303 S.W.2d 376 (1957); Texas State Board of Examiners in Optometry v. Carp, —Tex.—, 343 S.W.2d 242 (1961); and Attorney General's Opinion No. WW-278 (1957).

While the definitions in Section 2 do not clearly specify or limit all acts which might or might not be performed by a clinical laboratory, it is noted that Section 15 of House Bill 828 specifically provides:

"Nothing in this Act or the licensing hereunder shall be construed as authorizing or permitting any person to practice medicine or to furnish the services of a physician for the practice of medicine, and nothing in this Act shall repeal or in any manner affect any provision of the code relating to the practice of medicine, and nothing in this Act shall affect any clinical laboratory or laboratories operated by the State of Texas, the Federal Government, or any subdivision thereof, or a physician licensed in the arts of healing. All laboratory work done by clinical laboratories licensed hereunder shall be done only upon request of a physician licensed in the healing arts by the State of Texas, or a physician licensed in the state in which he practices, and all reports of the findings made in the tests conducted by the laboratory shall be reported only to the person requesting

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said test or to the person or persons designated by the person making such request."

In view of the provisions of Section 15, an individual licensed in accordance with the provisions of House Bill 828 is not permitted to perform any act which would constitute the practice of medicine in this State. On the contrary, such individuals perform chemical analyses and tests conducted by the laboratory for the use and benefit of individuals licensed to practice medicine in this State. Therefore, it is our opinion that the provisions of House Bill 828 do not violate the provisions of Section 31 of Article XVI of the Constitution of Texas.

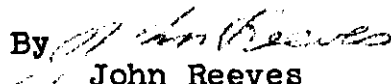
We do not find any provision in House Bill 828 which violates any other provision of the Constitution of Texas and you are, therefore, advised that its provisions are constitutional and valid.

S U M M A R Y

House Bill 828 of the 57th Legislature, relating to licensing of clinical laboratories, does not authorize the performance of acts which constitute the practice of medicine and is, therefore, not in violation of Section 31 of Article XVI of the Constitution of Texas and its provisions are constitutional and valid.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
John Reeves  
Assistant

JR:afg

APPROVED:

OPINION COMMITTEE  
W. V. Geppert, Chairman

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