



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

July 9, 1969

John Kinross-Wright, M. D.
Commissioner, Department of
Mental Health and Mental
Retardation
Box S, Capitol Station
Austin, Texas 78711

Opinion No. M- 431

Re: Whether a psychologist
employed by the Richmond
State School who con-
tracted tuberculosis
from a patient is
entitled to the benefits
provided by Article
6822a, V.C.S.

Dear Dr. Kinross-Wright:

Your recent request for an opinion is quoted as
follows:

"An employee at the Richmond State School, under control and management of this Department, has apparently contracted tuberculosis from a patient to which she administered a psychological examination, which examination was given in an enclosed area and lasted approximately two hours. X-rays made later confirmed the person examined to be infected with tuberculosis. The employee consulted a well-known chest specialist in Houston and medication to control the tuberculosis has been initiated and will have to be continued for at least one year.

"Your opinion is respectfully requested as to whether or not those appropriations made to the Richmond State School described in Section 8 of Article V of H. B. No. 5, Acts 60th

Legislature, First Called Session, 1968, may be used to pay the necessary drugs, medical and laboratory expenses incurred by this employee in combating the illness she has contracted."

We assume for the purposes of this opinion that a request for payment of the expenses described has been or will be made to the Governor and his approval obtained as required by Section 8 of Article V of H. B. No. 5, Acts of the 60th Legislature, First Called Session, 1968 (General Appropriations Bill). This section of the act provides:

"Sec. 8. PAYMENTS FOR INJURIES. Pursuant to Chapter 377, Acts, 1959, Fifty-sixth Legislature, Regular Session (Codified as Article 6822a), appropriations made in this Act for consumable supplies and materials, current and recurring operating expense, general operating expenses, other operating expenses, or general institutional expense, may also be expended for paying necessary drug, medical, hospital and laboratory expenses for the care and treatment of any State employee injured while performing the duties of any hazardous position to which he is assigned by his State employment. For the purposes of this Section, 'hazardous position' shall mean one for which the regular and normal duties inherently involve the risk or peril of bodily injury or harm.

"The expenditure of any appropriation for the purposes authorized by this Section shall have the approval of the Governor, shall be made only to the vendors of necessary drugs, medical, hospital

or laboratory services, and shall not exceed the amounts appropriated for the purposes stipulated in the preceding paragraphs nor result in jeopardizing the financing of the regular functions or services of the respective State agency.

"Where a State employee has received benefits through payments by the State pursuant to this Section, and also has received other liability benefits as a consequence of the same injury, such employee shall pay to the State Treasury all sums received or paid in his behalf as damages, for medical and hospital bills, up to but not in excess of the amounts of any such payments made by the State. No agency of this State who makes payments pursuant to this Section shall present the name of any employee who has failed to comply with this paragraph to the State Comptroller for the issuance of any Treasury warrant payable to such an employee.

"The provisions of this Section shall not apply to any agency of the State authorized to provide workmen's compensation insurance for its employees."

The pre-existing statute authorizing the legislature to make an appropriation of this nature is Article 6822a, V.C.S., which provides as follows:

"Section 1. The Legislature is hereby authorized to appropriate public funds for the purpose of paying for drugs and medical, hospital, laboratory, and funeral expenses of state employees injured or killed while engaged

in performance of a necessary government function assigned to the employee, or where the duties of such employee require the employee to expose himself to unavoidable dangers peculiar to the performance of a necessary governmental function.

"Sec. 2. Agencies of the state are hereby authorized to expend appropriated funds for the purpose of paying for drugs and medical, hospital, laboratory, and funeral expenses to those state employees under their jurisdiction and control only when such employees are engaged in the activities described in Section 1 of this Act, and only to the extent authorized by appropriations made by the Legislature.

"Sec. 3. The payment of the expenses provided for in Section 1 of this Act is authorized to be made in addition to other prerequisites of employment now authorized by law. Acts 1959, 56th Leg., p. 838, ch. 377."

The Legislature has authorized the Richmond State School funds for, inter alia, "other operating expense." But before a State employee can be held to be qualified to receive the benefits of Section 8, Article V of House Bill No. 5, he must meet the tests established by the Legislature in Section 8, viz. be "injured while performing the duties of any hazardous position to which he is assigned by his State employment." (Emphasis supplied.) While a definition is furnished by the statute for the term "hazardous position," none is furnished for the term "injured."

The distinction between a "disease" and an "injury" has been the subject of much litigation under the Workmen's Compensation Act of this State. Since the Legislature has excluded from the operation of said

section those state agencies authorized to provide Workmen's Compensation insurance for their employees, we believe the legislature intended that the term "injured" be used and defined in the same sense that it is used in the Workmen's Compensation Act.

Article 8306, Section 20, Vernon's Civil Statutes, provides as follows:

"Wherever the terms 'injury' or 'personal injury' are used in the Workmen's Compensation Law of this state, such terms shall be construed to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom. . ."

The courts give liberal construction to the Workmen's Compensation Act, and if a reasonable doubt exists as to the right of an employee to compensation, it should be resolved in favor of such right. Bailey v. American General Insurance Company, 154 Tex. 430, 279 S.W.2d 315 (1955). In the Bailey case, supra, the Supreme Court defined the terms "physical structure of the body" and "harm" as used in Article 8306, Section 20, as follows:

"The phrase 'physical structure of the body' as it is used in the statute, must refer to the entire body, not simply to the skeletal structure or to the circulatory system or to the digestive system. It refers to the whole, to the complex of perfectly integrated and interdependent bones, tissues and organs which function together. . .the structure should be considered that of a living person not as a static, inanimate thing.

"The ordinary as well as legal connotation of 'harm' is that it is of broader import than 'damage.'

Damage embraces direct physical injury to a cell, tissue or organ system; 'harm' to the physical structure of the body embraces also impairment of use or control of physical structures, directly caused by the accident." (Emphasis supplied.)

The distinction between an accidental injury and occupational disease is that an accidental injury can be traced to a reasonably definite time, place and cause, whereas an occupational disease is of slow and gradual development, and the time, place and cause of it are not susceptible of definite ascertainment. Barron vs. Texas Employers' Ins. Ass'n., 36 S.W.2d 464 (Tex.Comm.App. 1931). See also Texas Employers' Ins. Ass'n. v. McKay, 146 Tex. 569, 210 S.W.2d 147 (1948); Texas Employers' Insurance Association v. Bradford, 381 S.W.2d 234 (Tex.Civ.App. 1964, error ref. n.r.e.); Solomon v. Massachusetts Bonding and Insurance Co., 347 S.W.2d 17 (Tex.Civ.App. 1961, error ref.).

In the case of Barron v. Texas Employers' Ins. Ass'n., supra, the employee contracted tuberculosis as the result of inhaling gas from an oil well. He was able to point with reasonable certainty to the time, place and cause of the tuberculosis. The court held that the employee had suffered an "injury" within the meaning of the word as used in the Workmen's Compensation Act, in the following language:

"A disease contracted as the direct result of unusual conditions connected with the work, and not as an ordinary or reasonably to be anticipated result of pursuing the same should be considered as an accidental injury."

From the cases cited we conclude that the State employee in question was "injured" as that term is used in the statute in question.

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Whether the State employee was injured while performing the duties of a "hazardous position" is controlled by the definition supplied in Section 8, Article V, House Bill No. 5, quoted as follows:

"For the purposes of this Section, 'hazardous position' shall mean one for which the regular and normal duties inherently involve the risk or peril of bodily harm."

The patients of Richmond State School are impaired mentally, and often physically, or they would not qualify for admission to the school. In our opinion this State employee, required in the performance of her normal duty to expose herself at close quarters to the infirmities, mental and physical, of these patients, was in a position where her duties inherently involved the risk or peril of bodily injury or harm, and was occupying a "hazardous position" as defined by the statute. That the injury suffered, tuberculosis, was not one of the particular perils expected does not in our opinion bar this employee's qualification under the definition contained in Section 8.

If in fact the employee's tuberculosis was, in reasonable medical probability, caused by her exposure to the tubercular patient on the occasion in question, we conclude that the State employee in question does qualify for the benefits authorized by Section 8 of Article V, House Bill No. 5, 60th Legislature, First Called Session, 1968.

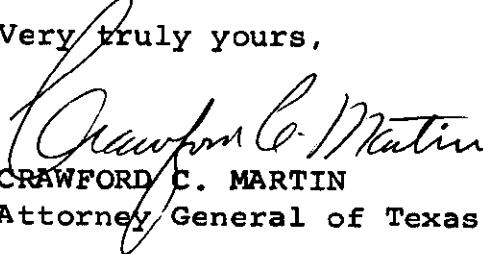
S U M M A R Y

An employee of Richmond State School contracting tuberculosis as the result of conducting a psychological examination of a tubercular patient may have necessary drug, medical, hospital or laboratory expenses paid from the appropriations made to Richmond

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State School for "other operating expense"
pursuant to Article 6822a, Vernon's Civil
Statutes, and Section 8, of Article V,
House Bill No. 5, Acts of the 60th Legisla-
ture, First Called Session, 1968.

Very truly yours,



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