



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

November 4, 1969

Honorable Preston Smith
Governor of Texas
Austin, Texas

Opinion No. M-504

Re: Term of office for members
of the Texas Board of
Licensure for Nursing Home
Administrators created by
the provisions of Senate
Bill 388, Acts 61st Leg.,
Regular Session, Chapter
411, page 1356, and related
questions.

Dear Governor Smith:

Your request for an opinion reads as follows:

"The Sixty-First Legislature, in its Regular Session enacted Senate Bill No. 388 entitled the 'Texas Board of Licensure for Nursing Home Administrators' and Senate Bill No. 667, entitled the 'State Board of Examiners of Psychologists'.

"In the creation of these Boards, the respective acts provide for overlapping three-year terms of office. Attorney General Opinion No. M-463, dated September 4, 1969, held that such terms of office were not authorized by Article 16, Section 30 or Article 16, Section 30a of the Texas Constitution.

"In this regard, would you kindly render this office an opinion in reference to the following:

- "1. May the members of both of these boards be appointed under the authority of Article 16, Section 30, of the Constitution, for a two-year term of office?
- "2. Senate Bill 388 provides for a nine-member Board and contains a provision for two-ex-officio members. Does this act mean that there are nine appointed members plus two ex-officio members?
- "3. Or does Senate Bill 388 provide for seven appointed members with the two ex-officio members completing the nine-member Board?"

In Attorney General's Opinion M-463 (1969) this office stated that Section 4 of Senate Bill 667, Acts of the 61st Legislature, Regular Session, 1969, Ch. 713, p. 2059 (Article 4512c, Vernon's Civil Statutes) prescribing the terms of office for members of the Texas State Board of Examiners of Psychologists for three years is in violation of Section 30 of Article XVI of the Constitution of Texas. Attorney General's Opinion M-463 upheld the remaining provisions of Senate Bill 667.

Subdivision 4 of Section 3 of Senate Bill 388, Acts of the 61st Legislature, Regular Session, Chapter 411, page 1356, (Article 4442d, Vernon's Civil Statutes), provides as follows:

"(4) Initial appointments to the board shall be as follows: three (3) members for a term of three (3) years; three (3) members for a term of two (2) years, and one (1) member for a term of one (1) year, and thereafter the terms of all appointed members shall be for three years unless the appointment is for an unexpired term only. Vacancies on the board shall be filled in like manner as initial appointments are made."

Section 30 of Article XVI of the Constitution of Texas provides that the duration of all offices not fixed by this Constitution shall never exceed two years. Section 30a of Article XVI of the Constitution of Texas provides:

"The Legislature may provide by law that the members of the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been or may hereafter be established by law, may hold their respective offices for the term of six (6) years, one-third of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law, and the Legislature shall enact suitable laws to give effect to this section." (Emphasis added.)

Subdivision 4 of Section 3 of Senate Bill 388 does not comply with Section 30a of Article XVI of the Constitution of Texas and since the terms fixed by Subdivision 4 are not authorized by any other constitutional provision such subdivision is void insofar as the term of office specified therein exceeds two (2) years. Attorney General's Opinion M-463.

Likewise, members of the Texas State Board of Examiners of Psychologists appointed pursuant to the provisions of Senate Bill 667 with the exception of the initial appointment are appointed for a two year term as provided therein. Section 30 of Article XVI, Constitution of Texas, prohibits terms of office not otherwise fixed by the Constitution from exceeding two years. It does not however prohibit the Legislature from providing terms of office for less than two years. Therefore the initial appointments will be for the terms specified in Section 4 of Senate Bill 667 insofar as said terms do not exceed two years. Two members therefore will be initially appointed for a term of one year and the remaining four members will be appointed for an initial term of two years.

It also follows that members of the Texas Board of Licensure for Nursing Home Administrators appointed pursuant to the provisions of Senate Bill 388 are appointed for a two-year term except for the initial appointment. The initial appointment will be for terms of office as provided in Subsection 4 of Section 3 of Senate Bill 388 insofar as the terms of office of the initial appointments do not exceed two years. Six members therefore will be initially appointed for a term of two years and one member will be appointed for a term of one year. Thereafter all members will be appointed for terms of two years unless the appointment is an unexpired term only.

In response to your second question, Subdivision 1 of Section 3 of Senate Bill 388, Acts of the 61st Legislature, Regular Session, provides:

"(1) There is hereby created the Texas Board of Licensure for Nursing Home Administrators which shall consist of nine (9) members. The Commissioner of Public Welfare for the State of Texas, or his designee, and the Commissioner of Health of the Texas State Department of Public Health, or his designee, shall be ex officio members of the board. Such designees shall be chosen from those representatives of the respective departments who are actively assigned to and are engaged in work in the nursing home field. One member shall be a physician duly licensed by the State of Texas, one member shall be an educator connected with a university program in public health or medical or nursing home care administration within the State of Texas, and five members shall be duly licensed nursing home administrators (with the exception of the initial appointees as hereinafter provided for) of the State of Texas." (Emphasis added.)

An analysis of Subdivision (1) reveals that the board shall consist of nine members. It provides that the Commissioner of Public Welfare, or his designee, shall be one ex officio member;

Honorable Preston Smith, page 5 (M-504)

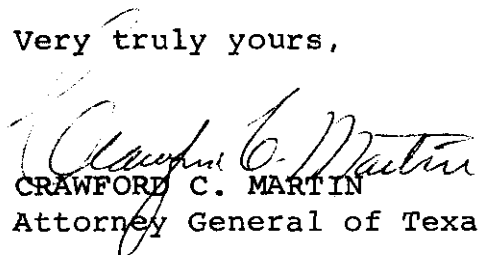
the Commissioner of Health, or his designee, shall be one ex officio member, another member shall be a physician, another member shall be an educator connected with a university program in public health or a medical or nursing home administration within the State of Texas and five other members shall be duly licensed nursing home administrators (with the exception of initial appointees), making up the total of the nine member board.

Therefore, it is our opinion that the nine member board includes the two ex officio members. In answer to your question No. 3, therefore, Senate Bill 388 provides for seven appointed members and two ex officio members completing the nine member board.

S U M M A R Y

Members appointed to the Texas State Board of Examiners of Psychologists pursuant to the provisions of Senate Bill 667, Acts of the 61st Legislature, Regular Session, 1969, Ch. 713, p. 2059, and members appointed to the Texas Board of Licensure for Nursing Home Administrators pursuant to the provisions of Senate Bill 388, Acts of the 61st Legislature, Regular Session, 1969, Ch. 411, p. 1356, serve for a term of two years prescribed by Section 30 of Article XVI of the Constitution of Texas except for the initial appointments. The Texas Board of Licensure for Nursing Home Administrators consists of seven appointed members and two ex officio members, completing the nine member board.

Very truly yours,


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Honorable Preston Smith, page 6 (M-504)

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