



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

July 8, 1971

Honorable Preston Smith  
Governor of Texas  
State Capitol  
Austin, Texas 78711

Opinion No. M-901

Re: Term of office of members of  
the Texas Board of Licensure  
for Nursing Home Administrator

Dear Governor Smith:

Your request for an opinion on the above subject matter asks the following question:

"Is an appointee, whose term of office on the board has not expired as of the effective date of House Bill No. 1756, entitled to hold his position until his term expires, or does the bill authorize the Governor to make six appointments without regard to the status of the present appointee?"

The Texas Board of Licensure for Nursing Home Administrators was created by Acts of the 61st Legislature, Regular Session, 1969 (Ch. 411, P.1356 being S.B. 388, codified as Article 4442d, Vernon's Civil Statutes). Subdivision 4 of Section 3 of said Act provided:

"(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."

It was held in Attorney General's Opinion M-504 (1969):

"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.

". . .

"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."

House Bill 1756, Acts of the 62nd Legislature, Regular Session, 1971, amended subdivision 4, supra, to read as follows:

"(4) Appointed members of the board serve staggered terms of six (6) years with the terms of two (2) members expiring on January 31 of each odd-numbered year. In making the initial appointments, the Governor shall designate two (2) members for terms expiring in 1973, two (2) members for terms expiring in 1975, and two (2) members for terms expiring in 1977. Vacancies on the board shall be filled by appointment for the unexpired portion of the term."

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.)

It is noted that the term of office prescribed by the amendment contained in House Bill 1756, supra, complies with Section 30a of Article XVI, and therefore the terms of office of appointed members of the board are staggered terms of six (6) years; two for terms expiring January 31, 1973, two for terms expiring January 31, 1975, and two for terms expiring January 31, 1977.

In addition to changing the terms of office of the appointed members of the board, House Bill 1756 reduced the membership of the board to six (6) appointed members and two (2) ex officio members. Furthermore, House Bill 1756 contains no hold-over provision with respect to the present membership of the board. Since House Bill 1756 does not provide that any member or members of the board shall retain his membership, and in view of the fact that the membership is reduced and the term of office of all appointed members is changed, it is our opinion that House Bill 1756 terminates the terms of office of the present appointed members to the board.

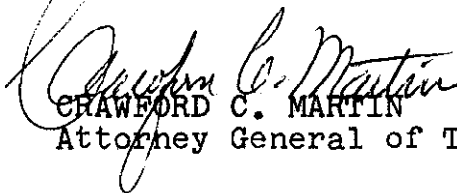
Pursuant to subdivision 4 as amended by House Bill 1756, the Governor is authorized to make six (6) appointments to the board pursuant to its provisions. In making such initial appointments the Governor shall designate two (2) members for terms expiring January 31, 1973, two (2) members for terms expiring January 31, 1975, and two (2) members for terms expiring January 31, 1977.

#### S U M M A R Y

Pursuant to the provisions of House Bill 1756, 62nd Legislature, Regular Session, 1971, the Governor is authorized to make six (6) appointments to the Texas Board of Licensure for Nursing Home Administrators. In making such initial appointments, the

Governor shall designate two (2) members for terms expiring January 31, 1973, two (2) members for terms expiring January 31, 1975, and two (2) members for terms expiring January 31, 1977.

Yours very truly,

  
CRAWFORD C. MARTIN  
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Prepared by John Reeves  
Assistant Attorney General

APPROVED:  
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