



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL,
ATTORNEY GENERAL.**

June 10, 1976

The Honorable Melvin Rowland
Chairman
Texas Health Facilities
Commission
314 Highland Mall Blvd.
Austin, Texas 78752

Opinion No. H-835

Re: Whether a Veterans
Administration Hospital
is required to obtain a
certificate of need or
exemption certificate
from the Texas Health
Facilities Commission.

Dear Mr. Rowland:

You have requested our opinion regarding whether the Veterans Administration must obtain a certificate of need or an exemption certificate from the Texas Health Facilities Commission, pursuant to article 4418h, V.T.C.S., before it may construct a hospital. Article 4418h provides, in section 3.01:

Each person must obtain from the commission a certificate of need or an exemption certificate in accordance with this Act for a proposed project to:

- (1) substantially expand a service currently offered or provide a service not currently offered by the facility;
- (2) construct a new facility or change the bed capacity of an existing facility;
- (3) modify an existing facility;
- (4) convert a structure into a health-care facility; or
- (5) organize an HMO which requires a new or modified facility. (Emphasis added).

"Person" is defined in section 1.03(14) as

an individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or a political subdivision or instrumentality of the state, the federal government or a political subdivision or instrumentality of the federal government, any receiver, trustee, assignee, or other similar representative or any other legal entity. (Emphasis added).

The Veterans Administration is without question an "instrumentality of the federal government." It is clear, however, that

[t]he United States may perform its functions without conforming to the police regulations of a state. Arizona v. California, 283 U.S. 423, 451 (1931).

One of the "functions" of the Veterans Administration is to "provide hospitals." 38 U.S.C. § 5001.

In Arizona v. California, the United States Supreme Court held that, if Congress had the power to authorize the construction of Boulder Dam, the Secretary of the Interior had no obligation to submit the plans and specifications to the state engineer for approval, as required by state law. supra at 151-52. See also Leslie Miller, Inc. v. State of Arkansas, 352 U.S. 187 (1956). In Penn Dairies, Inc. v. Milk Control Commission of Pennsylvania, 318 U.S. 261 (1943), the Supreme Court declared that

in the absence of Congressional consent, there is an implied constitutional immunity of the national government from state taxation, and from state regulation of the performance, by federal officers and agencies, of governmental functions. Id. at 269.

A federal statute relating to the Veterans Administration could be construed to provide such consent. The statute provides:

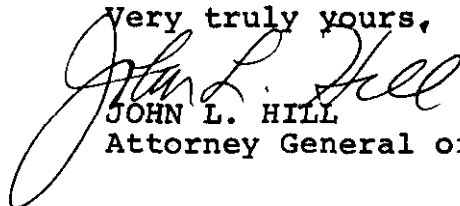
The Administrator, on behalf of the United States, may relinquish to the State in which any lands or interests therein under his supervision or control are situated, such measure of legislative jurisdiction over such lands or interests as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of legislative jurisdiction shall be initiated by filing a notice thereof with the Governor of the State concerned, or in such other manner as may be prescribed by the laws of such State, and shall take effect upon acceptance by such State.
38 U.S.C. § 5007.

We have been advised by the Office of the Governor, however, that the Administrator of the Veterans Administration has not filed any such notice to relinquish legislative jurisdiction. As a result, we must conclude that the State of Texas is without authority to require the Veterans Administration to obtain a certificate of need or an exemption certificate from the Texas Health Facilities Commission before it may construct a hospital.

S U M M A R Y

The State of Texas is without authority to require the Veterans Administration to obtain a certificate of need or an exemption certificate from the Texas Health Facilities Commission before it may construct a hospital.

Very truly yours,

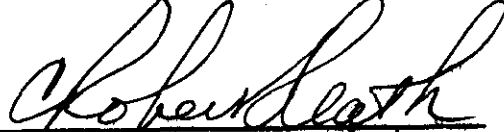

JOHN L. HILL
Attorney General of Texas

APPROVED:



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DAVID M. KENDALL, First Assistant



Handwritten signature of C. Robert Heath in cursive script.

C. ROBERT HEATH, Chairman
Opinion Committee

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