



# The Attorney General of Texas

January 4, 1978

JOHN L. HILL  
Attorney General

Supreme Court Building  
P.O. Box 12548  
Austin, TX. 78711  
512/475-2501

701 Commerce, Suite 200  
Dallas, TX. 75202  
214/742-8844

4814 Alberta Ave., Suite 160  
El Paso, TX. 79905  
915/533-3484

723 Main, Suite 610  
Houston, TX. 77002  
713/228-0701

806 Broadway, Suite 312  
Lubbock, TX. 79401  
806/747-6238

4313 N. Tenth, Suite F  
McAllen, TX. 78501  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205  
512/225-4181

An Equal Opportunity  
Affirmative Action Employer

Honorable John Wilson, Chairman  
Committee on Health and Welfare  
House of Representatives  
Austin, Texas

Opinion No. H-1109

Re: Whether consent of  
next-of-kin is required  
for the taking of corneal  
tissue from a decedent  
under H.B. 307.

Dear Chairman Wilson:

You have requested our opinion concerning the following  
question:

May a medical examiner or justice of  
the peace permit the removal of corneal  
tissue by an eye bank official from a  
decedent who dies under circumstances  
requiring an inquest without the prior  
consent of the decedent's next-of-kin?

You have referred us to article 4590-4, V.T.C.S.,  
enacted as House Bill 307 of the 65th Legislature, which  
provides in part:

Section 1. On a request from an autho-  
rized official of a nonprofit corporation  
chartered under the laws of Texas, to  
obtain, store, and distribute donor eyes  
to be used by those licensed to practice  
medicine for corneal transplants, for  
research, or for other medical purposes  
and whose medical activities are directed  
by one licensed to practice medicine in  
Texas, for corneal tissue, the justice  
of the peace or the medical examiner  
may permit the taking of corneal tissue  
if:

(1) the decedent from whom the tissue  
is to be taken died under circumstances  
requiring an inquest by the justice of  
the peace or the medical examiner;

(2) no objection by a person listed in Section 2 of this Act is known by the justice of the peace or the medical examiner; and

(3) the removal of corneal tissue will not interfere with the subsequent course of an investigation or autopsy, or alter the postmortem facial appearance.

. . . .

Sec. 3. The justice of the peace, the medical examiner, and the eye bank official are not liable for damages in a civil action brought by a person listed in Section 2 of this Act who has not objected prior to the removal of the corneal tissue on any theory of civil recovery based on a contention that the consent of plaintiff was required prior to the removal of corneal tissue as authorized by this Act.

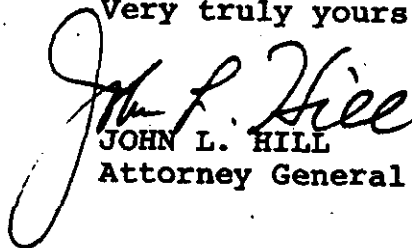
Acts 1977, 65th Leg., ch. 11, at 26-27. Section 2 of the Bill provides for objections by certain relatives.

In light of the positive authorization in section 1 and the protection from liability in section 3 it is abundantly clear that, so long as no objection has been made, consent of next-of-kin is not necessary for the removal of corneal tissue from a decedent who died under circumstances requiring an inquest. See generally Love v. Aetna Casualty & Surety Co., 99 S.W.2d 646 (Tex. Civ. App. -- Beaumont 1936), aff'd, 121 S.W.2d 986 (Tex. Comm'n App. 1938, opinion adopted).


#### S U M M A R Y

A medical examiner or justice of the peace may permit the removal of corneal tissue by an eye bank official for a decedent who dies under circumstances requiring an inquest without the prior consent of the decedent's next-of-kin.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

jst