



The Attorney General of Texas

May 1, 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
214/742-8944

4824 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
806/747-5238

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

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity
Affirmative Action Employer

Thomas E. Bishop
Major General, TexARNG
The Adjutant General
P. O. Box 5218
Austin, Texas 78783

Opinion No. H- 1160

Re: Whether article 6252-26,
V.T.C.S., applies to members of the
State military forces.

Dear Mr. Bishop:

You inquire whether members of the State military forces are covered by article 6252-26, V.T.C.S., as amended by the 65th Legislature. Acts 1977, 65th Leg., ch. 273, at 730. Prior to amendment, article 6252-26 required the State to pay damages adjudged against officers and employees of certain named agencies for acts or omissions in the exercise of their duties. Among the named agencies were the State military forces, which consist of the Texas National Guard and the Texas State Guard. V.T.C.S. art. 5765. The Governor is the commander-in-chief of the State military forces, V.T.C.S. art. 5765, § 4, but the Adjutant General's Department is responsible for day-to-day operations. V.T.C.S. art. 5781; see General Appropriations Act, Acts 1977, 65th Leg., ch. 872, art. III, at 2814.

The 65th Legislature enacted Senate Bill 37, which amended article 6252-26 to provide as follows:

The State of Texas is liable for and shall pay actual damages, court costs, and attorney fees adjudged against officers or employees of any agency, institution, or department of the state . . . where the damages are based on an act or omission by the person in the course and scope of his office or employment for the institution, department, or agency

Section 1(a). According to the bill analysis, the amendments extended to all State officials and employees the protection formerly accorded to a limited group of persons. Thus, the deletion of references to specific agencies did not remove them from the Act, but instead broadened it to cover agencies

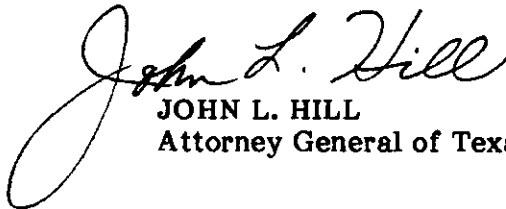
too numerous to list. Consequently, employees and officers of the Texas military forces are covered by article 6252-26 as amended.

We note, however, that the Adjutant General supervises National Guard technicians who are federal employees paid to assist the Texas National Guard pursuant to 32 U.S.C. § 709. The technicians are employees of the United States and are covered by the Federal Tort Claims Act. 32 U.S.C. § 709(d); [1968] U.S. Code Cong. & Ad. News 3318, 3325; see also 32 U.S.C. § 715. The caption of Senate Bill 37 states that the Act relates to "defense of claims based on certain conduct of state officers or employees. . . ." Acts 1977, 65th Leg., ch. 273, at 730 (emphasis added). See Texarkana & Ft. S. Ry. Co. v. Houston Gas & Fuel Co., 51 S.W.2d 284, 287 (Tex. 1932). In our opinion, it does not apply to the federal technicians supervised by the Adjutant General. See Attorney General Opinions H-540 (1975); M-719 (1970).


S U M M A R Y

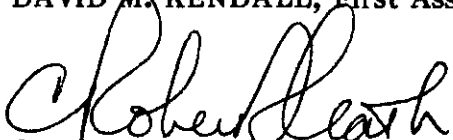
The State military forces are covered by article 6252-26, V.T.C.S., as amended by the 65th Legislature. Its protection does not extend to the federal National Guard technicians supervised by the Adjutant General.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

jst