OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

February 24, 1939

Mr. N. J. Bartez, Secretary
State Board of Barber Examiners
Austin, Texas

Dear Sir:

Opinion No. 0-314
Re: Under the quoted ordinance, can the city of Midland require barbers to undergo the Wasserman blood test?

Your request for an opinion as to whether the ordinance of the city of Midland, quoted in your letter, requires barbers to undergo the Wasserman blood test, has been received by this Department.

Section I of the Ordinance of the City of Midland reads as follows:

"No health certificate for use in the city of Midland, Texas shall be issued by any physician to any person, now or hereafter required by law to have or exhibit a health certificate, certifying the holder's freedom from contagious, infectious or communicable diseases * * *"

We lay particular stress on the importance of the underscored words in construing the ordinance's application to the barbers of Midland. We have examined the statutes and are of the opinion that Section I, ante, refers to Article 705c of the Penal Code of Texas that reads as follows:

"No person, firm, corporation, or association operating, managing, or conducting any hotel, restaurant, dining car, soda water fountain, liquor dispensary, or any other

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establishment where food or drink of any kind is served or permitted to be served, or operating any dairy, creamery, meat market, abattoir, meat packing plant, bakery, candy factory, cannery, cold storage, pecan shelling establishment, vegetable market, or any factory or other place where food is stored, packed, prepared, or otherwise handled in this State, shall work, employ, or keep in their employ, in or about any said place, or deliver any article of food therefrom, any person infected with or affected by any infectious or contagious disease, or work or employ any person to work in or about any said place, or deliver any article of food therefrom, who at the time of his employment had not in his possession a certificate signed by a legally licensed physician residing in the county where said person is to be employed, or is employed, attesting the fact that the bearer had been examined by such physician within one week prior to the time of employment, and that such examination disclose the fact that such person to be employed was free from any infectious or contagious disease, or fail to institute and have made medical examinations of all such employees at intervals of time not exceeding six (6) months and after such examinations promptly discharge from their employment in or about any said place any and all persons found to be infected with or affected by any infectious or contagious disease."

We have also examined the provisions of Article 734a of our Penal Code, which is the State Barber Law. This act requires a barber to present to the Board a health certificate upon application for a license. The license thus obtained is valid for one year. We do not think the license could be construed to be a health certificate. So far as we can determine the health certificate is kept by the Board. We have found no provision in Article 734a of our

Penal Code that requires a barber to retain, exhibit or have a health certificate for inspection.

We do not think that the ordinance, as written, applies to barbers for in our opinion barbers are not required by law to have or exhibit a health certificate for use in the city of Midland.

It is, therefore, the opinion of this Department that the ordinance submitted to us does not require barbers to undergo a Wasserman blood test in order to be permitted to work in the city of Midland, Texas.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Morris Hodges

Morris Hodges

MH:ob

APPROVED:

/s/ Gerald C. Mann

Attorney General of Texas