



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

February 14, 1966

Dr. J. E. Peavy
Commissioner of Health
Texas State Department
of Health
Austin, Texas

Opinion No. C-609

Re: Whether Sec. 4 of Senate Bill No. 130, 59th Legislature makes it mandatory that the State Board of Health make an examination for tuberculosis infection of all pupils in the first and seventh grades, or whether this section only requires the Board to provide materials for the test if school boards make this a requirement.

Dear Dr. Peavy:

Your letter requesting an opinion of this office reads as follows:

"Senate Bill No. 130 as passed by the 59th Legislature at its Regular Session and codified in Vernon's Texas Civil Statutes as Article 4477-12, effective September 1, 1965, transferred to the State Health Department from the State Board for Hospitals and Special Schools all tuberculosis hospitals.

"The above-mentioned act further provides for the unification and consolidation in the State Health Department and responsibility, powers, duty, authority and function of case finding, follow up, treatment, cure, prevention, eradication and control of tuberculosis in the State of Texas.

"Section 4 of Senate Bill No. 130 is as follows:

"Section 4. The State Board of Health shall provide for the examination for tuberculosis infection of all pupils in the first and seventh grades of the public, parochial and private schools of this state, and of all pupils transferred to the public, parochial, and private schools of this state from another state or country.'

"Therefore, we request your opinion with regard to the following questions:

"1. Is the Texas State Department of Health required to test all pupils in the first and seventh grades for tuberculosis infection?

"2. If it is not required that the Texas State Department of Health actually perform the tests, is the Texas State Department of Health required to provide the necessary materials for the tests upon request of local health officials?"

Continuing the progress of improvements in the field of public health and welfare has always been an important goal of the Legislature of the State of Texas. This purpose was behind the enactment of Section 4 of Article 4477-12, Vernon's Civil Statutes. This section of the cited statute deals specifically with a phase of the program of tuberculosis eradication.

The words "provide for", used in the text of Section 4, have several meanings. Among those meanings cited in Webster's Third New International Unabridged Dictionary, 1961, p. 1827, are the following:

- (1) to make provision
- (2) to supply what is needed for sustenance or support
- (3) equipping, stocking, or giving in the interest of preparing with foresight
- (4) to supply for use.

In answer to your first question, it is our opinion that the language of Section 4 of Senate Bill No. 130 does not make it mandatory that the State Board of Health itself make an examination for tuberculosis infection. The mandatory word of the statute "shall" is followed by the words "provide for",

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which according to definition, mean to make provision for or to supply. Therefore, the Texas State Department of Health is not mandatorily required to conduct such examinations of the first and seventh grade school children in the State regardless of any action taken by the local school boards and health units.

In answer to your second question, we are of the opinion that the State Board of Health, upon request of local health officials, is mandatorily required to supply, equip, stock, and/or furnish materials necessary for tuberculosis examinations of the designated children.

S U M M A R Y

The State Health Department is not required by Section 4 of Article 4477-12, Vernon's Civil Statutes, to conduct examinations for tuberculosis infection of all first and seventh grade children. However, the State Health Department, upon request of local health officials, is required by Section 4 to supply, equip, stock, and furnish materials necessary for tuberculosis examination of the designated children by local school boards and health units.

Very truly yours,

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Attorney General

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APPROVED:
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