



**THE ATTORNEY GENERAL
OF TEXAS**

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August 3, 1970

Hon. Henry D. Smith, Chairman
Commission on Fire Protection
Personnel Standards and
Education
P. O. Box 2000
Lubbock, Texas 79408

Opinion No. M- 663

Re: Whether, pursuant to
Article 4413(35), V.C.S.,
the Commission on Fire
Protection Personnel Stand-
ards and Education, has
authority to hire an ex-
ecutive director.

Dear Mr. Smith:

Your recent letter requesting the opinion of this office concerning the referenced matter states, in part, as follows:

"We have been requested by the Governor's Division of Operational Analysis and the Legislative Budget Office to secure an opinion from your office regarding the legality of the Commission on Fire Protection Personnel Standards and Education hiring an executive director by virtue of the authority of S.B. 269 (Article 4413(35), Vernon's Civil Statutes) creating the Commission."

In setting forth the powers and duties of the Commission, Sections 6 and 7 of Article 4413(35), Vernon's Civil Statutes, provides as follows:

"Sec. 6. The commission shall have the authority to:

"(1) certify fire protection training and education programs as having attained the minimum required standards suggested by such commission;

"(2) certify instructors as having qualified as fire protection instructors under such conditions as the commission may prescribe;

"(3) direct research in the field of fire protection and to accept gifts and grants for such purposes;

"(4) recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education at the request of the Coordinating Board, Texas College and University System.

"Sec. 7. In carrying out its duties and responsibilities the commission shall have the following additional duties:

"(1) to meet at such times and places in the State of Texas as it deems proper; meetings shall be called by the chairman upon his own motion, or upon the written request of five members;

"(2) to contract with other agencies, public or private, or persons, as it deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to cooperate with city, county, state and federal agencies in training programs;

"(3) to make reasonable rules and regulations to carry out the duties and powers of the commission."

It should be noted that nowhere in Article 4413(35), supra, is power specifically granted to the Commission to hire an executive director.

With reference to the subdelegation of powers and duties by public officers, it has been stated that: "It is a general rule that public duties must be performed and governmental powers exercised by the officer or body designated by law; they cannot be delegated to others." 47 Tex.Jur.2d 149, Public Officers, Section 114.

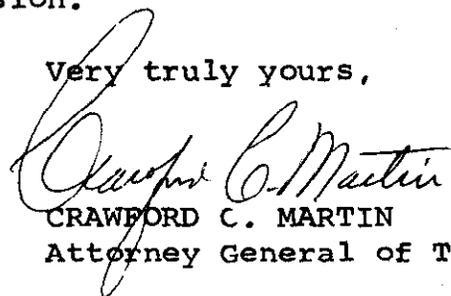
However, it has also been stated that "A board may delegate ministerial or administrative functions not calling for the exercise of reason or discretion by appointing agents to perform duties of that character." Id. at p. 150.

Our opinion is that these two principles control our answer to your inquiry. Therefore, we hold that your Commission may lawfully hire an executive director, provided his duties are solely administrative or ministerial, and do not call upon him to exercise discretion or judgment concerning the powers and duties of the Commission that are set forth in Sections 6 and 7 of Article 4413 (35), *supra*, and that are specifically required to be performed by members of the Commission.

S U M M A R Y

Pursuant to Article 4413 (35), Vernon's Civil Statutes, the Commission on Fire Protection Personnel Standards and Education has authority to hire an executive director, provided that his duties are solely administrative or ministerial, and do not call upon him to exercise discretion or judgment concerning the powers and duties required to be performed by the members of the Commission.

Very truly yours,



CRAWFORD C. MARTIN

Attorney General of Texas

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Assistant Attorney General

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