



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

May 11, 1971

Hon. L. DeWitt Hale  
Chairman, Judiciary Committee  
House of Representatives  
State Capitol  
Austin, Texas 78711

Opinion No. M-856

Re: Constitutionality of H.B.  
784, permitting an  
individual to petition for  
leave to file an informa-  
tion in the nature of a  
quo warranto.

Dear Representative Hale:

You have requested our opinion on the validity of H.B. 784 of the 62nd Legislature, Regular Session.

House Bill 784 attempts to amend Article 6253, Vernon's Civil Statutes, so as to permit an individual to petition for leave to file an information in the nature of a quo warranto without the necessity of such suit being brought by the Attorney General or District Attorney or County Attorney of the proper county or district.

It is our opinion that such an amendment interferes with the constitutional power and duty of the Attorney General, the District Attorneys and County Attorneys, who are required to represent the State in such a suit and no one else may do so. Article IV, Section 22, Texas Constitution; Article V, Section 21, Texas Constitution; Staples v. State, ex rel King, 112 Tex. 61, 245 S.W. 639 (1922); Maud v. Terrell, 109 Tex. 97, 200 S.W. 375 (1918); Adamson v. Connally, 112 S.W.2d 287 (Tex.Civ.App. 1937, no writ); Yett v. Cook, 115 Tex. 205, 281 S.W. 837 (1926); Mulcahy v. Houston Steel Drum Company, 402 S.W.2d 817 (Tex.Civ. App. 1966, no writ). The very nature of a quo warranto proceeding is to call into question by what authority the office or

franchise is exercised. The State is always a necessary party, and it is not available to a private citizen in his capacity as such. See Texas Practice, Lowe and Archer, Sec. 541, page 497.

In Adamson v. Connally, supra, the Court stated the rule as follows:

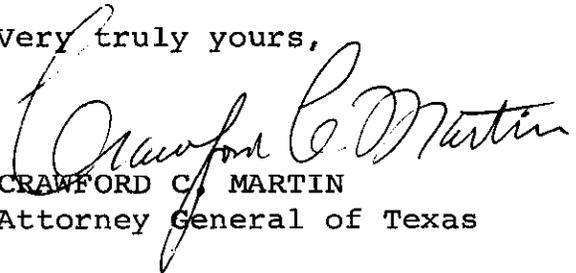
"An action of quo warranto, or information in the nature of quo warranto, is a suit to which the state is a party plaintiff. R.S. 1925, art. 6253. Such an action must be brought by the Attorney General or the district or county attorney of the county or district. Const. art. 4, Section 22; Id. art. 5, Section 21. The Legislature would have no constitutional power to authorize such an action to be brought by any other person without one of the officers named."  
(Emphasis added.)

In view of the foregoing, you are advised that H.B. 784 of the 62nd Legislature, Regular Session, is unconstitutional.

S U M M A R Y

H.B. 784 of the 62nd Legislature, Regular Session, purporting to permit an individual to petition for leave to file an information in the nature of a quo warranto without the suit being brought by the Attorney General or the District Attorney or County Attorney is unconstitutional. Article IV, Section 22, and Article V, Section 21, of the Texas Constitution.

Very truly yours,

  
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APPROVED:  
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