



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

February 19, 1975

The Honorable Dolph Briscoe
Governor of Texas
State Capitol
Austin, Texas 78711

Opinion No. H- 534

Re: Length of term of members
of the Board of Nurse Examiners.

Dear Governor Briscoe:

You have requested our opinion regarding the construction of article 4513, V. T. C. S., which provides for the appointment of a Board of Nurse Examiners. The statute authorizes the Governor to:

. . . biennially appoint a Board of Nurse Examiners to consist of six members, and the term of office of those so appointed shall be two for six years; two for four years; and two for two years. The terms of office for members of the Board shall expire on January 31 of odd-numbered years. Each member of said Board shall be a registered nurse at least twenty-five years of age, of good moral character and a graduate of an accredited school of professional nursing, and three members shall have at least three years' teaching experience in educational work among nurses. One of the two persons appointed every two years shall be a person with at least three years' teaching experience in education work among nurses.

As you have indicated, the statute appears to have created a Board with two members serving for two years; two serving for four years, and two serving for six years, since the word "initial" or "first" has not been inserted prior to "term of office," and since the usual provision that "members appointed thereafter shall serve for six years" has been omitted.

However, the language causing the confusion, underlined in the foregoing quotation, has existed in the statute since 1931 and has never given rise to any question. Traditionally, Board members have served six year terms and we must assume the Legislature was cognizant of that fact when, in 1969, it amended the statute but reenacted the identical language. In 1969 this office issued Attorney General Opinion M-433 finding that the 1969 amendment did not abolish the old Board and that its members should continue in office until the expiration of the terms for which they were appointed. In addition, the language of the statute which provides that "one of the two persons appointed every two years shall be a person with at least three years' teaching experience in education work among nurses" is rendered meaningless unless the statute is interpreted to provide for six-year terms, with two persons appointed every two years.

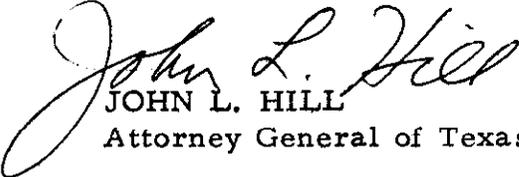
This conclusion is buttressed by considering the constitutional difficulty that arises if the alternative construction is adopted. Article 16, section 30a, of the Texas Constitution authorizes the Legislature to establish six-year terms for members of "boards . . . established by law." Article 16, section 30, provides that "[t]he duration of all offices not fixed by this Constitution shall never exceed two years." If article 4513 is interpreted as creating a Board to which two members are appointed for four-year terms, it is clearly violative of the constitutional directive, which proscribes any term of office whose duration is more than two but less than six years.

It is an established principle that when a statute is susceptible to more than one construction, one which would render it constitutional and the other which would render it invalid, the former must prevail. Alobaidi v. State, 433 S. W. 2d 440 (Tex. Crim. App. 1968), cert. denied, 393 U. S. 943; Newsom v. State, 372 S. W. 2d 681 (Tex. Crim. App. 1963); Amaimo v. Carter, 212 S. W. 2d 950 (Tex. Civ. App. --Beaumont 1948, writ ref., n. r. e.). We therefore hold that the 1969 revision of article 4513 did not alter the term of office of the members of the Board of Nurse Examiners, and that term is for six years.

SUMMARY

Under article 4513, V. T. C. S., each member of the Board of Nurse Examiners is appointed for a term of six years.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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