



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

November 16, 1976

**JOHN L. HILL
ATTORNEY GENERAL**

The Honorable Jackie W. St. Clair
Commissioner
Texas Department of Labor and
Standards
P. O. Box 12157, Capitol Station
Austin, Texas 78711

Opinion No. H-897

Re: Authority of the
Department of Labor and
Standards to make special
boiler inspections and
charge a fee therefor.

Dear Commissioner St. Clair:

You have requested our opinion regarding the authority of the Department of Labor and Standards to make special boiler inspections and to charge a fee therefor. You state that, since 1969, the Department has been conducting "shop surveys" for boiler manufacturers to enable such manufacturers to obtain certification by the American Society of Mechanical Engineers. The Department has been charging for this service a fee of \$60.00 per half day and \$100.00 per full day, plus travel and per diem expenses of the inspectors.

The Texas Boiler Inspection Law, article 5221c, V.T.C.S., authorizes the Commissioner of the Department of Labor and Standards to inspect certain steam boilers and to promulgate "rules and regulations . . . for the construction, installation, use, maintenance and operation of steam boilers and appurtenances thereof." Sections 4, 6. Furthermore, the Commissioner is required thereby to fix and collect fees for such inspections, not to exceed \$15.00. Section 12. The statute does not, however, provide for the inspection of boiler manufacturers, nor authorize a fee therefor.

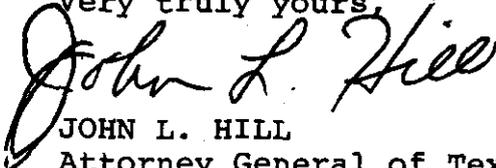
We understand a "shop survey" to be a general inspection of the plant and machinery of a boiler manufacturer, including an evaluation of the qualifications of its employees.

It is well established that an administrative agency has only those powers expressly granted to it by statute and those necessarily implied therefrom. Stauffer v. City of San Antonio, 344 S.W.2d 158 (Tex. Sup 1961). In our view, article 5221c cannot be construed to authorize the Commissioner of the Department of Labor and Standards to conduct "shop surveys" of boiler manufacturers and to charge a fee for such inspections. We do not consider or decide the question of whether the Department of Labor and Standards might properly conduct a more narrow inspection directed at boilers being constructed in the shops of manufacturers.

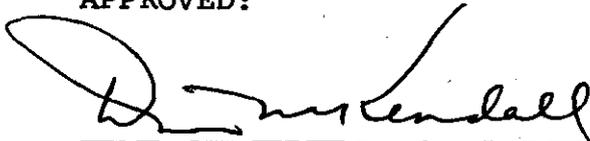
S U M M A R Y

The Department of Labor and Standards is not authorized under article 5221c, V.T.C.S., to conduct "shop surveys" of boiler manufacturers and to charge a fee therefor.

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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