



The Attorney General of Texas

April 19, 1978

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Honorable Joe S. Gonzales, Chairman
State Board of Polygraph Examiners
Suite 502, Lamar Crest Office Tower
7701 North Lamar
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Opinion No. H- 1156

Re: Whether violation of the
Board of Polygraph Examiners'
regulations is a penal offense
under article 4413(29cc), section
26, V.T.C.S.

Dear Mr. Gonzales:

You have requested our opinion as to whether the violation of regulations promulgated by the Board of Polygraph Examiners is a penal offense under section 26 of article 4413(29cc), V.T.C.S. That provision states:

[a]ny person who violates any provision of this Act . . .
shall be guilty of a misdemeanor

Section 6(a) of article 4413(29cc) authorizes the Board to

issue regulations consistent with the provisions of this
Act for the administration and enforcement of this
Act

You ask whether a person who violates a Board regulation forbidding conduct which is not prohibited by the statute itself may be prosecuted for violating a provision of the Act.

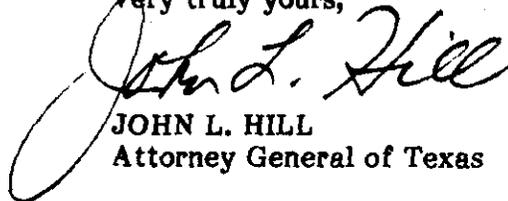
In the present instance, there is little evidence that the Legislature intended to confer upon the Board the power to define substantive crimes. If it had attempted to do so, the attempt would have been invalid. It is well established that article 1, section 28 of the Texas Constitution prohibits the Legislature from delegating its authority to create a penal offense. Dockery v. State, 247 S.W. 508, 509 (Tex. Crim. App. 1923); Ex parte Leslie, 223 S.W. 227, 229 (Tex. Crim. App. 1920).

In Attorney General Opinion O-872 (1939), this Office held that the mere violation of a rule of the State Parks Board could not serve as the predicate for an arrest, unless the act in question was also made a penal offense by statute. See also Attorney General Opinions H-119 (1973); O-5047 (1943). In our opinion, this view is equally applicable to regulations of the Board of Polygraph Examiners. Accordingly, we believe that the violation of Board regulations which forbid conduct not prohibited by any statute is not a penal offense under section 26 of article 4413(29cc).

S U M M A R Y

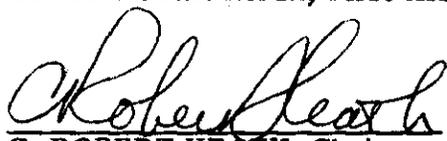
The violation of regulations promulgated by the Board of Polygraph Examiners, which regulations prohibit conduct not proscribed by any statute, is not a penal offense under section 26 of article 4413(29cc), V.T.C.S.

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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