



**THE ATTORNEY GENERAL  
OF TEXAS**

June 13, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Ms. Yvonne Kohutek  
Chairperson  
Texas State Board of Examiners  
of Professional Counselors  
1100 West 49th Street  
Austin, Texas 78756

LO-89-48

Dear Ms. Kohutek:

You ask whether a person who is licensed under the Licensed Professional Counselor Act, article 4512g, V.T.C.S., but who is engaged in activities or services to which the act does not apply is nonetheless required to comply with the act and the rules adopted by the board.

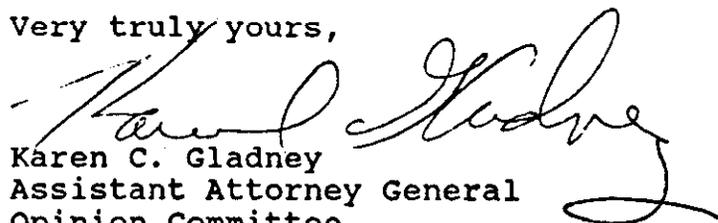
We note that, if signed, House Bill 1667, which was passed by the 71st Legislature and awaits the governor's signature, will make both your question and our answer moot as of September 1, 1989. That bill expressly makes the act and rules adopted under it applicable to persons who would be exempt from the act but who have nonetheless obtained licenses. However, we answer your question for the meantime.

The act, which creates a voluntary certification process, is made inapplicable to certain persons and activities. The inclusion of exemptions from this voluntary scheme seems odd, but makes some sense in historical perspective. In 1979, Senate Bill 884, which would have required licensing for the practice of professional counseling, was introduced in the legislature. That bill contained certain exemptions from the licensing requirement. Although that bill did not pass, it apparently provided the basis for the 1981 introduction of Senate Bill 606. That bill, which was finally adopted in 1981 to form article 4512g, retained the exemptions found in the earlier bill but made licensing a voluntary procedure. You do not ask and we do not consider whether the Board of Examiners of Professional Counselors has authority under the current law to license persons to whose activities and services the act is inapplicable.

Section 6(e)(2) of article 4512g requires the board to adopt and revise, with the approval of the department, rules not inconsistent with the law of this state that are necessary to administer this Act.

See generally Texas Fire and Casualty Co. v. Harris County Bail Bond Board, 684 S.W.2d 177 (Tex. App. - Houston [14th Dist.] 1984, writ ref'd n.r.e.). You state that the board has consistently held that a person who has voluntarily brought himself under the licensing procedure and regulation of the board has waived any and all applicable exemptions. We disagree. We find nothing in the act to support that conclusion. Section 3 of article 4512g provides exemptions in unequivocal terms by making the act itself inapplicable to certain activities, services and persons. If the act is not applicable to those activities, services and persons, rules promulgated under the authority provided by the act must be similarly inapplicable. Our holding will, of course, be nullified if House Bill 1667 becomes law.

Very truly yours,

  
Karen C. Gladney  
Assistant Attorney General  
Opinion Committee

APPROVED: Sarah Woelk, Chief  
Letter Opinion Section

KCG/er

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