



ANATOMICAL BOARD OF THE STATE OF TEXAS

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OPINION COMMITTEE

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RQ-0549-JC

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42606-02
I.D. # 42606

Dear General Cornyn:

I submit this opinion request on behalf of the Anatomical Board of the State of Texas (SAB or Board). The SAB's enabling legislation is at Chapter 691 of the Health and Safety Code. The Board is composed of representatives of the colleges of chiropractic, osteopathy, medicine, or dentistry in Texas. See TEX. HEALTH & SAFETY CODE ANN. § 691.002(a) (Vernon 1992).

Background Information:

The SAB may receive bodies from various sources, including the following:

- **Receipt from political subdivisions. See TEX. HEALTH & SAFETY CODE ANN. § 691.023 (Vernon 1992);**
- **Receipt from donors other than decedents. See TEX. HEALTH & SAFETY CODE ANN. § 692.005 (Vernon 1992 & Supp. 2002); and**
- **Receipt from living persons, donating their bodies upon death, to a medical or dental school or other authorized donee, for the advancement of medical science. See TEX. HEALTH & SAFETY CODE ANN. § 691.028 (Vernon 1992);**

The Board is authorized to distribute bodies:

- **To institutions and persons authorized to receive bodies. See TEX. HEALTH & SAFETY CODE ANN. § 691.022(a) (Vernon 1992);**

- To schools and colleges of chiropractic, osteopathy, medicine, or dentistry incorporated in this state, to physicians, and to other persons as provided by this section. See TEX. HEALTH & SAFETY CODE ANN. § 691.030(a) (Vernon 1992); and.
- To the State Board of Morticians and schools of mortuary science. See TEX. HEALTH & SAFETY CODE ANN. § 691.030(e) (Vernon 1992).

The SAB has no physical plant, no employees, and receives no legislative appropriations. All bodies subject to distribution by the Board are located at the institutions represented on the Board that have appropriate facilities.

Issues for Your Review:

The first question relates to the SAB's authority with respect to anatomical gifts or donations under §§ 691.028(a) and 692.005.

Section 691.028(a) reads as follows:

An adult living in this state who is of sound mind may donate his body by will or other written instrument to a medical or dental school or other donee authorized by the board to be used for the advancement of medical science.

TEX. HEALTH & SAFETY CODE ANN. § 691.028(a) (Vernon 1992).

Section 692.005 provides, as relevant:

The following persons may be donees of gifts of bodies or parts:

...

(3) an accredited medical, chiropractic, or dental school, college, or university, to be used only for education, research, therapy, or the advancement of medical or dental science;

...

or

(7) the Anatomical Board of the State of Texas.

TEX. HEALTH & SAFETY CODE ANN. § 692.005 (Vernon 1992 & Supp. 2002).

Question 1:

Is a body donated to a named school, college, or university under § 692.005(3) or under § 691.028(a) a body subject to distribution by the SAB under §§ 691.022 and 691.030?

The second question involves the SAB's authority to set fees. Section 691.008(a) provides that "[t]he board may set and collect reasonable and necessary fees for receiving and distributing bodies." See TEX. HEALTH & SAFETY CODE ANN. § 691.008(a) (Vernon 1992). Additionally, § 691.032 states:

A person or institution receiving a body under this chapter shall pay in a manner specified by the board, or as otherwise agreed on, all costs incurred in distributing the body so that the state, a county, a municipality, or an officer, employee, or representative of the state, a county, or a municipality does not incur any expense.

TEX. HEALTH & SAFETY CODE ANN. § 691.032 (Vernon 1992).

Question 2:

Do §§ 691.008 and 691.032 authorize or require the SAB to determine the fees that the institutions in possession of the bodies charge to the institutions that will use the bodies for the advancement of medical or dental science?

The remaining questions relate to the Board's authority to ship bodies out of state. Subject to certain authorization requirements in the instrument creating the anatomical gift or donation, the SAB may transport a body:

To another state if there is a shortage of bodies in that state, but only if the other state agrees to ship surplus bodies to this state when the board determines that there is a shortage in this state and ...

TEX. HEALTH & SAFETY CODE ANN. § 691.030(f) (Vernon 1992).

Your office has previously opined that the word "state" as used in 691.030(f) means "a state in the United States." Op. Tex. Att'y Gen. No. JM-663 (1987) at 2.

Question 3:

Does the phrase "if the other state agrees to ship surplus bodies to this state" mean that someone in the recipient state must purport to bind that state to ship bodies to Texas if the Board determines a shortage of bodies exists in this state? The reason for the question is that few states have anatomical boards or agencies that perform similar functions.¹

Question 4:

Is the SAB required to obtain an agreement "to ship bodies to Texas" each time the Board ships or authorizes the shipment of bodies to another state, or is the Board authorized to rely on a state's agreement previously filed with the Board?

Question 5:

If you determine that the SAB may rely on a previously filed agreement, then please consider the following situation: The SAB has an agreement on file from State X to send bodies to Texas if the SAB determines a shortage exists. The SAB receives a request from a private medical school in State X for bodies upon which to conduct legitimate medical studies or research. Clearly, a *private* medical school in State X would not have the authority to obligate State X to ship bodies to Texas in times of shortage. May the SAB, relying on the previously filed agreement with State X, authorize the filling of the request?

Question 6:

Is the Board required to look beyond the representation of the person purporting to bind the other state for the purpose of determining the person's actual authority to do so?

Question 7:

Does § 691.030 authorize the SAB to transport body *parts* to another state for legitimate medical studies or research?

The SAB appreciates your consideration of the foregoing questions. If you need clarification of any issue, please contact me or Mr. Cue Boykin, Assistant Attorney General, counsel for the Board.

Sincerely,



Ron Philo, Ph. D. Chairman
Anatomical Board of the State of Texas

¹The Board has identified 10 states with anatomical boards or departments as follows: Alabama, Colorado, Florida, Indiana, Louisiana, Maryland, Nebraska, North Carolina, Oklahoma, and Virginia.
