



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

January 27, 1939

Hon. George W. Cox
State Health Officer
Austin, Texas

Dear Mr. Cox:

Opinion No. 0-213

Re: Whether food handler must have laboratory analysis made before physician can issue certificate that food handler is free from venereal diseases.

You request an opinion of this Department upon the following question stated in your letter of January 25th:

"Is it necessary, before a physician can issue a certificate that a food handler is free from venereal diseases, that said food handler have a laboratory analysis made, showing that said food handler is free from syphilis, gonorrhoea, or other venereal diseases?"

You also request a copy of an opinion of this Department construing Article 4640c, Revised Civil Statutes, which opinion was written by the Department on the 24th day of January, 1939. A copy of this such opinion is enclosed herewith for your reference. You will observe that in such opinion this Department held that since the Legislature did not in Article 4640c undertake to prescribe the method or methods by which a reputable licensed physician should determine whether the applicant for a marriage license was free from venereal diseases, the County Clerk was not authorized to go behind the certificate and require of a reputable licensed physician that he resort to a method or methods prescribed by the Clerk.

The specific question you have presented for the consideration of the Department requires the interpretation

of Article 705c of the Penal Code of Texas. Article 705c in substance requires of an employer that he ascertain that a prospective employee to handle food has in his possession a certificate signed by a legally licensed physician, disclosing the fact that such employee is free from any infectious or contagious diseases, and requires that every employer have every employee food handler similarly re-certified during every six months.

It is the duty of the Department to interpret the laws as they are written by the only authority authorized under the Constitution in this State to enact them. We are not at liberty to read into a law enacted by the Legislature, by a strained construction of the language used by that body, or by interpolating language not used, provisions and requirements which the Legislature has not seen fit to incorporate in the law. We must construe the law as it is, not as we might think it should have been.

The Legislature has, no doubt, proceeded upon the theory, in enacting these two statutes mentioned hereinabove, that standard methods of medical practice are subject to constant change and are known only to physicians, and that licensed physicians of this State may be relied upon to satisfy themselves by examinations according with standard medical practice that a person is free from infectious or communicable diseases before such physician will willingly certify that such is the case.

In enacting Article 705c, the Legislature has not seen fit to prescribe the method or methods to be used by the physician in determining whether a food handler is free from infectious or communicable diseases. Nor does the Legislature therein place upon the employer or upon the food handler the burden of seeing that the methods used by the physician accord with standard medical practice. This duty is placed by the Legislature upon the conscience of the particular physician making the certificate.

We express no opinion herein that a laboratory analysis is or is not necessary to determine the existence of infectious or communicable diseases. We hold merely that the Legislature has not undertaken to prescribe a laboratory analysis or any other particular method or methods to be used by the physician in determining the existence of such diseases, but leaves the determination of

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the methods to be used to the conscientious discretion of
the physician.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ R. W. Fairchild
Assistant

RWF:FBP:mjs

APPROVED:

ATTORNEY GENERAL OF TEXAS