



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

AUSTIN 11, TEXAS

~~JOHN SCHEMKE DEBEVEREUX~~
ATTORNEY GENERAL

Hon. C. H. Robinson, D.S.C., Secretary
Texas State Board of Chiropractic Examiners
Fair Building
Fort Worth, Texas

Dear Sir:

Opinion No. 0-2676
Re: May Article 778a of the Penal
Code be made the basis for a
criminal prosecution?

We have received your letter of recent date requesting the opinion of this department upon the above stated question. Your letter reads, in part, as follows:

"The Texas State Board of Chiropractic Examiners has had brought to its attention an instance where a licentiate of the said board practices chiropractic in this State, under a name other than his own proper name, which appears upon his license certificate, as issued by the State Board of Chiropractic Examiners.

" * * * "

" * * * "

"The question is: In your opinion is Article 778-a, a part of Article 778, by Article 778-a, being added thereto? Or is Article 778-a, a new Article without a penalty provision as contained in Article 778? In short, could the said Board prosecute under Article 778-a? * * * "

May we restate your question to read:

"May Article 778a of the Penal Code be made the basis for a criminal prosecution?"

Article 778a of the Penal Code reads:

"Art. 778a. NAME UNDER WHICH ONE MAY PRACTICE CHIROPODY

It shall be unlawful for any person or persons to practice chiropractic in this State under the name of a corporation, company, association, joint stock company or partnership, or trade name, or under any name other than his own proper name, which shall be the name in his license, as issued by the State Board of Chiropractic Examiners. Each day of violation of the Article shall constitute a separate offense."

Article 778 of the Penal Code, as amended by the Forty-sixth Legislature, provides for a penalty of a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment in the county jail for not less than 30 days nor more than six months, or by both such fine and imprisonment for certain specified violations set forth in said Article.

Article 778a, supra, was enacted by the Forty-sixth Legislature as a new Article amending Chapter 11, Title 12 of the Penal Code. The mere fact that the Legislature included Article 778a in the same Act which amended Article 778 does not make Article 778a a part of said amended Article 778.

No penalty is provided in Article 778a for violation of the provisions of said Article, and there is no general penalty statute contained in Chapter 11, Title 12 of the Penal Code. Therefore, in view of the fact that there is no penalty provided for a violation of Article 778a, it is the opinion of this Department that said Article may not be made the basis for a criminal prosecution.

Trusting that the above satisfactorily disposes of your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ D. Burle Daviss
D. Burle Daviss
Assistant

APPROVED SEPT. 4, 1940
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

DBD:ob:jrb

APPROVED OPINION COMMITTEE
BY BWB, Chairman