



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Dr. Geo. W. Cox
State Health Officer
Austin, Texas

Dear Sir:

Opinion No. O-4514
Re: May Section 2, paragraph (e),
Article 4476a, Vernon's Anno-
tated Civil Statutes, be
amended, altered or repealed
by the State Board of Health,
or will it be necessary to
have a legislative amendment
to make the repeal? And a
related question.

Your letter requesting the opinion of this department on the questions stated therein reads as follows:

"This Department requests an opinion relative to several provisions of Article 4476a, Revised Civil Statutes, which is an Act regulating the manufacturing and renovating of articles of bedding.

"In view of the present emergency and various orders of the Federal Government restricting the use of many new materials, many of the manufacturers are now forced to use second-hand materials in filling articles of bedding. In accordance with this Act the use of second-hand material is permissible provided it is properly sterilized and tagged showing that the material is second-hand. Manufacturers are now objecting to Section 2, paragraph (e) which requires that each article of bedding manufactured for resale, containing second-hand material, shall bear securely sewn thereto on all four sides of the tag, attached to both sides of the article of bedding, a sub-

substantial white cloth tag 4" x 8" in size, upon which shall be indelibly stamped or printed in red ink in the English language in plain type not less than 1/8" in height, stating 'Second-hand Material'.

"Under Section 2 the State Board of Health is charged with the enforcement of the Act for the protection of health and to prevent the spread of disease. It is further empowered and its duty shall be to make, amend, alter and repeal general rules and regulations of procedure for carrying into effect all of the provisions of this Act and to prescribe means, methods and practices to make effective such provisions.

"It has been suggested by bedding manufacturers that under this Section, the State Board of Health would have the power to amend Section 2, paragraph (a) and allow manufacturers to attach a small label in black print in order to aid in the marketing of the article.

"Please advise us whether or not Section 2, paragraph (a) may be amended, altered or repealed by the State Board of Health or whether it would be necessary to have a Legislative amendment making the repeal.

"Secondly, we would like to be advised as to whether the 4" x 8" label should be attached to an article of bedding that contains a mixture of new and second-hand material."

Paragraph (a), Section 2 of Article 478a, Vernon's Annotated Civil Statutes, reads as follows:

"Every article of bedding manufactured for resale containing second-hand material, shall bear, securely sewn thereto on all four sides of the tag, attached to both sides of the article of bedding, a substantial white cloth tag four (4) by eight (8) inches in size, upon which shall be indelibly stamped

or printed in red ink, in the English language, in plain type not less than one-half (1/2) inch in height, stating: 'second-hand material'."

Section 5 of Article 4476a, Vernon's Annotated Civil Statutes, provides:

"The State Board of Health is hereby charged with the enforcement of this Act, for the protection of health and to prevent the spread of disease. It is further empowered, and its duty shall be to make, amend, alter or repeal general rules and regulations of procedure for carrying into effect all the provisions of this Act, and to prescribe means, methods, and practices to make effective such provisions."

Section 5, Article 4476a, supra, specifically charges the State Board of Health with the enforcement of the act, for the protection of health and to prevent the spread of disease. The State Board of Health is further empowered, and it is its duty to make, amend, alter or repeal general rules and regulations of procedure for carrying into effect all the provisions of the act, and to prescribe means, methods and practices to make effective such provisions. This provision of the statute does not authorize the State Board to amend, alter or repeal any provision of the statute, but merely authorizes the State Board to make, amend or alter or repeal general rules and regulations of procedure promulgated by said Board for carrying into effect all the provisions of the act, and to prescribe means, methods and practices to make effective such provisions.

Generally speaking, the Legislature may repeal any statute at will, and only the Legislature has authority to repeal a statute. (Texas Jurisprudence, Volume 39, page 130; Texas Jurisprudence, Volume 9, page 433; Berry v. State, 156 S. W. 626, and authorities cited therein)

The Legislature alone is authorized by the Constitution (Article 1, Section 28) to suspend any law of the State.

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The Legislature has undoubted power to amend or change existing statutory law, including that which is contained in a code or revision, in order to meet changing conditions. An act may be amended during the session at which it was passed or at any subsequent session, by enactment specifically setting forth its changed terms. (Texas Jurisprudence, Volume 39, page 128, and authorities cited therein)

In view of the foregoing, in reply to your first question, as stated above, you are respectfully advised that it is our opinion that the State Board of Health has no legal authority to amend, alter or repeal paragraph (e), Section 2 of Article 4476a, supra. To amend, alter or repeal said section legislative enactment is necessary.

With reference to your second question, it will be noted that paragraph (e), Section 2, supra, specifically provides:

"Every article of bedding manufactured for resale containing second-hand material, shall bear, securely sewn thereto on all four sides of the tag, attached to both sides of the article of bedding, a substantial white cloth tag . . . (of the dimensions prescribed by said provision) upon which shall be indelibly stamped or printed in red ink, in the English language, in plain type not less than one-half (1/2) inch in height, stating: 'second-hand material'."

It is our opinion that if the bedding manufactured for resale contains any second-hand material the label as prescribed by said paragraph (e) should be attached. It is immaterial whether the bedding manufactured for resale contains all second-hand material or a mixture of new and second-hand material. In other words, if the bedding manufactured for resale contains any portion of second-hand material the label must be attached in compliance with paragraph (e).

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Ardell Williams
Assistant

APPROVED APR 13, 1922

James Sullivan
FIRST ASSISTANT
ATTORNEY GENERAL

AW:GO

APPROVED
OF THE
COMMITTEE
BY *BUT*
CHAIRMAN