



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable M. A. (Bill) Bundy, Chairman  
Eleemosynary Investigating Committee  
706 Van Buren  
Wichita Falls, Texas

Dear Sir:

Opinion No. 0-5697  
Re: Residential requirements  
of a person employed by  
the Board of Control to  
act in the capacity of the  
Superintendent of an Ele-  
emosynary Institution under  
the provisions of House  
Bill No. 666 and Senate  
Bill No. 114, 48th Legis-  
lature. And a related ques-  
tion.

You have requested the opinion of this department  
on two questions concerning the statutory requirement that  
the superintendent of a State Hospital shall reside at the  
hospital. Your questions are as follows:

"I would like to be advised if a person em-  
ployed by the Board of Control to act in the ca-  
pacity of the superintendent is required, under the  
law as cited above, to live on the grounds of said  
Institution and can such person fill the position  
as superintendent and not live on the grounds of  
the Institution that he is supervising but instead  
live 200 miles away from that Institution and func-  
tion in that capacity. And further, will he be in  
his legal rights to draw the salary of the super-  
intendent under such conditions."

Senate Bill No. 114, Chapter 65, Acts 48th Legisla-  
ture, prescribes the qualifications of the superintendent of  
a State Hospital, as follows:

"Section 1. The Superintendent of each  
State Hospital shall be a married man, a skilled

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physician authorized to practice medicine in Texas, and shall have not less than five (5) years experience in the treatment of mental diseases. He shall reside at the hospital with his family and shall devote his time exclusively to the duties of his office, and may be removed by the State Board of Control for good cause after a trial in a court of competent jurisdiction in Travis County, Texas, and a judicial determination of whether good cause exists for such removal.

"Sec. 2. Good cause, as referred to in the preceding Article means commission of any felony or any other offense involving moral turpitude or of the failure and refusal of any Superintendent of any eleemosynary institution in the State of Texas to knowingly and willfully refuse to carry out the duties prescribed by the Legislature or by the State Board of Control.

" . . . ."

It is noted that the statute states in positive terms that the superintendent "shall reside at the hospital." Ordinarily, when used in a statute, the word "shall" or "must" is of mandatory effect; but a statute is sometimes held to be directory notwithstanding the use of the word "shall." 39 Tex. Jur. 37, "Statutes"; Hess & Skinner Engineering Co. v. Turney, 109 Tex. 208, 203 S. W. 593; McLaren v. State, 82 Crim. Rep. 449, 199 S. W. 811. We find nothing in the wording of this statute to indicate that the word "shall" was not here used in the ordinary and imperative sense. And especially is this true in view of the fact that this language follows immediately after the requirement that the superintendent "shall have not less than five (5) years experience in the treatment of mental diseases," and immediately precedes the requirement that he "shall devote his time exclusively to the duties of his office."

It is therefore the opinion of this department that the superintendent of each State Hospital is required by law to live at the hospital.

The answer to your second question is governed by the general provisions of the current biennial appropriation

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to eleemosynary institutions, which includes salary appropriations for all superintendents of State Hospitals. This is House Bill No. 666, Chap. 398, Acts 48th Legislature, Reg. Sess. Among such general provisions is the following (p. 767):

"No salary shall be paid to any person unless such person actually discharges assigned duties."

As we have seen above, residence at the hospital is one of the duties assigned to the superintendent of each State Hospital.

It is therefore our further opinion that wilful failure or refusal of the superintendent of a State Hospital to reside at the hospital will work a forfeiture of his right to draw the salary attached to such position.

This opinion, of course, is based upon the assumption that the State has provided for, and made available to, the Superintendent suitable living quarters for himself and his family at the State Hospital of which he is Superintendent.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

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J.C.C.

