



**THE ATTORNEY GENERAL
OF TEXAS**

GROVER SELLERS
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable John D. Reed, Commissioner
Bureau of Labor Statistics
Austin, Texas

Dear Sir:

Opinion No. 0-5960
Re: Article 1302, Section 83,
V.R.C.S.; extent of Labor Com-
missioners' investigation;
responsibility of Labor Com-
missioners as to initiation of
investigation.

Your opinion request dated May 3, 1944, and filed in lieu of your opinion request of April 12, 1944, has been received in this office and is hereby acknowledged.

Your first question is:

"1. Under Article 1302, Section 83, does this office, in the absence of statutory qualifications, have the authority to look beyond the application as submitted to determine whether or not any organization applying for a charter to represent working people is a bona fide labor organization and actually representing wage earners before submitting our recommendations to the Secretary of State?"

It is our opinion that you have authority to look beyond the application itself so long as your investigation is concerned with the "merits" of the application.

House Bill 16, Acts 1941, 47th Legislature, page 350, chapter 190 reads:

"Section 1. That subdivision 83 of Article 1302, Title 32, Chapter 1 of the Revised Civil Statutes of the State of Texas, 1925, be, and the same is hereby amended so as to read hereafter as follows:

"'83. To organize laborers, working men, wage earners, and farmers to protect themselves in their various pursuits; provided however, no charter shall be issued hereafter to laborers,

working men, or wage earners, or amendment granted to a charter of a corporation previously created to organize laborers, working men, or wage earners, or that may be hereafter created hereunder to organize laborers, working men, or wage earners, by the Secretary of State to any person, association or corporation, for such purposes without an investigation first having been made by the Commissioner of Labor Statistics concerning such application, and a favorable recommendation made thereon by said Commissioner to the Secretary of State. It is expressly provided that no investigation or recommendation by the Commissioner of Labor Statistics shall be required or made of applications from farmers for a charter.' (emphasis added)

"Sec. 2. The fact that there is no adequate law in the State of Texas which authorizes an investigation on the merits of an application for a charter, or amendment to a charter, by laborers, working men, or wage earners, and the further fact that injustices are being perpetrated upon unsuspecting working men and wage earners in many instances where charters or amendments to charters are granted as herein enumerated, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be, and the same is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted." (emphasis added)

You will observe that Section 2 of this Act states: "The fact that there is no adequate law in the State of Texas which authorizes an investigation on the merits of an application for a charter . . .", and declares an emergency in connection with the ends sought by this Act and, at the same time, states that the Legislature intended this investigation to go to the merits of the application itself.

Section 1 of this Act provides that no such charter shall be issued by the Secretary of State ". . . without an investigation first having been made by the Commissioner of Labor Statistics concerning such application . . ." The ordinary interpretation of the word "concerning" suggests that the Act shall be more broad than a mere "inspection" or "examination" of the application. The word "investigation" also suggests a broader meaning.

Your second question is:

"2. Is it the duty of the office of the Secretary of State to refer applications for charters, under Section 83, to this office for approval, or is it the duty of this office to initiate such an investigation without having same referred to us by the Secretary of State?"

It is our opinion that, under Article 1302, Section 83, you are not to initiate such investigations until you are called upon to do so by the Secretary of State.

To take the contrary view and say that you should initiate such investigations on your own motion would produce a manifestly undesirable result that the Legislature would not likely have intended. It would necessitate your checking each one of the thousands of charter applications that are filed with the Secretary of State to determine whether you thought each of them required your investigation. It would conceivably result in cases where you would initiate investigations, incur delay, trouble and expense in making them, and then find that your recommendation would be unnecessary because the Secretary of State would reject the application on other grounds, or would issue the charter under provisions of another section of Article 1302, under which he considered the application to be filed and which required no investigation by your department.

Article 1302, Section 83, which is quoted above, designates a particular purpose for which a charter may be granted by the Secretary of State. It also sets up an essential pre-requisite which must be complied with before the Secretary of State has authority to issue a charter under that subsection; that pre-requisite is that he, the Secretary of State, have before him your favorable recommendation on the application, based upon the investigation which has been discussed above.

Article 1302, Section 83 clearly authorizes you to make these investigations when proper cases arise. However, we are unable to find any authority whatsoever which authorizes or makes it your duty to undertake to determine which pending applications for charters require your investigation and to undertake investigations accordingly.

Hon. John D. Reed, page 4

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/W. T. Curry
W. T. Curry
Assistant

WTC:FO:wc

APPROVED MAY 8, 1944
s/Grover Sellers
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/OS Chairman