



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable George W. Cox
State Health Officer
Texas State Board of Health
Austin 2, Texas

Dear Sir:

Opinion No. 0-7204

Re: What jurisdiction and authority
may the State Health Officer
have in the inspection of Kitchens
or food preparation and
food service to patients in
public or private hospitals.

This will acknowledge receipt of your letter of
April 3, 1946, which reads as follows:

"I enclose the Texas Food and Drug Law, the
State law on the sterilization of Dishes and the
Texas Health Certificate Law which gives the
reference to these laws in the Statute.

"I would like to know what jurisdiction and
authority I may have in the inspection of kitchens
or food preparation and food service to patients
in public or private hospitals."

The powers and duties of the Director of the Food
and Drug Division of the State Board of Health were vested in
the State Health Officer by Article 4465A, V.A.C.S.

Article 4466, Vernon's Civil Statutes, sets out the
duties of the director and among other things Section 3 pro-
vides as follows:

"Inquire into the quality of the foods and
drug products manufactured or sold or exposed
for sale, or offered for sale in this State,
and for such purposes he may enter any creamery,
factory, store, salesroom, drug store or labor-
atory or place where he has reason to believe

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foods or drugs are made, prepared, sold or offered for sale or exchange, and open any cask, tub, jar, bottle or package containing or supposed to contain any article of food or drug and examine or cause to be examined the contents thereof, and he shall take samples therefrom and make analysis thereof. When making such inspection he shall seal and mark such sample and tender to the vendor or person having custody of same the value thereof, and a written statement stating the reason for taking such sample."

The inspecting officer is further protected by Article 716, Vernon's Annotated Penal Code, in the following language:

"No person shall willfully hinder or obstruct the director of the food and drug division of the State Board of Health, or his inspector or other person duly authorized by him in the exercise of the powers conferred upon him by the laws of this State."

The standards of qualification of sanitary employees and the sterilization of dishes for public eating and sleeping places are set forth in Section 1 of Article 705c, and Section 2 of Article 700b of Vernon's Annotated Penal Code, which read respectively as follows:

"No person, firm, corporation, common carrier or association operating, managing, or conducting any hotel or any other public sleeping or eating place, or any place or vehicle where food or drink or containers therefor, of any kind, is manufactured, transferred, prepared, stored, packed, served, sold, or otherwise handled in this State, or any manufacturer or vendor of candies or manufactured sweets, shall work, employ, or keep in their employ, in, on, or about any said place or vehicle, or have delivered any article therefrom, any person infected with any transmissible condition or any infectious or contagious diseases, or work, or employ any person to work in, on, or about said place, or to deliver any article therefrom, who, at the time of his or her employment, failed to deliver to the employer or his agent, a certificate signed by a legally licensed physician, residing in the county

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where said person is to be employed, or is employed, attesting the fact that the bearer had been actually and thoroughly examined by such physician within a week prior to the time of such employment, and that such examination disclosed the fact that such person to be employed was free from any transmissible condition of any infectious or contagious disease; or fail to institute and have made, at intervals of time not exceeding six months, actual and thorough examinations, essential to the findings of freedom from communicable and infectious diseases, of all such employees, by a legally licensed physician residing in the county where said person is employed, and secure in evidence thereof a certificate signed by such physician stating that such examinations had been made of such person, disclosing the fact that he or she was free from any transmissible condition of any communicable and infectious diseases."

"Sec. 2. Sterilization of Dishes, Receptacles, or Utensils. - No person, firm, corporation, or association operating, managing, or conducting any hotel, cafe restaurant, dining car, drug store, soda water fountain, meat market, bakery, or confectionery, liquor dispensary or any other establishment where food or drink of any kind is served or permitted to be served to the public, shall furnish to any person any dish, receptacle or utensil used in eating, drinking, or conveying food if such dish, receptacle, or utensil has not been washed after each service until clean to the sight and touch in warm water containing soap or alkali cleanser. After cleaning, all glasses, dishes, silverware, and other receptacles and utensils shall be placed in wire cages and immersed in a still bath of clear water heated to a minimum temperature of 170° F. for at least three minutes, or two minutes at 180° F. Upon removal from the hot water, all glasses, dishes, silverware, and other receptacles and utensils shall be stored in such a manner as not to become contaminated. Provided that the State Board of Health may approve other equally effective methods

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of treatment by steam or hot water that meet with the minimum requirements for the safety of the public health, as prescribed by the State Board of Health, that are not inconsistent with this Act. When paper receptacles, ice cream cones, or other single service utensils are used for serving food or drinks, they must be kept in a sanitary manner, protected from dust, flies, and other contaminations."

The above statutes set out the authority and duties of the State Health Officer in public eating and sleeping places. In passing, your attention is directed to Art. 4477-1, V.A.C.S., which sets out the minimum standards of sanitation and health protection. The question now is whether a hospital is such an institution as to come within that classification.

13 Ruling Case Law, page 938, defines a hospital in the following language:

"In its widest sense a hospital is a place appropriated to the reception of persons sick or infirm in body or mind"

"The term 'hospital' is often used synchronously if not synonymously with 'asylum' which is defined to be an institution for receiving, maintaining and, as far as possible, ameliorating the condition of persons suffering from bodily defects, mental maladies, or other misfortunes, as an orphan asylum, asylum for the blind, or asylum for the insane, and etc."
(Underscoring ours)

People v. Hutchings, 114 N. E. 444: "Decent and respectful treatment implied in the contract between a private hospital and a patient."

Smith v. Duke University, 14 S.E. (2d) 643: "Ordinarily, a hospital undertakes only to furnish room, food, facilities for operation, and attendance, and is not liable for injuries resulting from the negligence of a physician"

The services rendered by a hospital are set out in Southern Surety v. Beard, 235 S. W. 240, by the El Paso Court of Civil Appeals, in which writ of error was dismissed by the Supreme Court, in the following language:

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"The articles on hospitals we have examined do not specify the services ordinarily rendered by hospitals. We can however imagine the inconvenience and utter lack of what would be expected of a hospital service that did not furnish some care, meals, heat when needed, and artificial light to a totally disabled employee."

The above case was followed in the case of Common Casualty Insurance Co. v. Hilton, 55 S. W. (2d) 127:

"The care, meals, medical attention, etc., furnished to a disabled employee commensurate with his needs are included in hospital services"

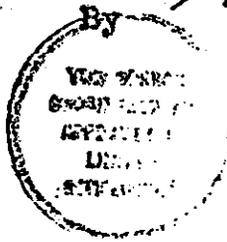
It is, therefore, our opinion that under the above quoted statutes, the State Health Officer has the power to inspect kitchens and food preparation and food service to patients in public or private hospitals.

Very truly yours

ATTORNEY GENERAL OF TEXAS

W. P. Watts

W. P. Watts
Assistant



APPROVED MAY 7 1946
Carl P. Kelley
FIRST ASSISTANT
ATTORNEY GENERAL

WPW:oot