



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER CARR
ATTORNEY GENERAL

January 29, 1964

Honorable R. L. Lattimore
Criminal District Attorney
Hidalgo County
Edinburg, Texas

Opinion No. C-210

Re: Whether local city and county health officers have legal authority to issue warrants of arrest for the removal of persons infected with tuberculosis in an infectious and contagious state to a state tuberculosis hospital.

Dear Mr. Lattimore:

You have requested an opinion of this office in regard to the captioned matter. Article 4477-11, Vernon's Civil Statutes, cited as the Texas Tuberculosis Code, provides in Section 5(c) thereof as follows:

"Any person who violates the provisions of Section 4(d), or who fails to follow the directions of the local health authority, or who fails to follow the directions of his attending physician pursuant to Section 4(c), or who in the opinion of the local health authority cannot be treated with reasonable safety to the public, at home, may be quarantined, as that term is hereinafter defined, and the local health authority may direct, pursuant to rules and regulations promulgated by the Department, the removal of the person to a suitable place for examination, and if such person is found to be infected with tuberculosis in an infectious and contagious state, then such person may be quarantined, as that term is hereinafter defined, until such person is no longer in an infectious and contagious state."

"Quarantine, as used in this Section, means the limitation of movement and separation, during that period of time

while infectious and contagious, from other persons not so infected, in such places and under such conditions as will prevent the direct or indirect conveyance of such infectious or contagious condition to others not so infected.

"A person found to be infected with tuberculosis in an infectious and contagious state and quarantined under the provisions of this Section may be placed in any place suitable for the detention and segregation required under the provisions of this Section. If suitable facilities are not available within the jurisdiction of the local health authority, then in such event, the person so quarantined may be transported to a State tuberculosis hospital designated by the Board. The Board is hereby empowered and directed to provide suitable facilities for detention of such individuals."
(Emphasis supplied)

You note in your request that such article does not specifically empower the issuance of warrants of arrest by local health authorities. However, the Department is given specific power to promulgate rules and regulations in the enforcement of its quarantine power.

Article 4477-11 has not been construed by the courts of this state. However, Article 4445, Vernon's Civil Statutes, has been several times construed by the Court of Criminal Appeals. This statute has always provided for quarantine of persons suffering from venereal disease, without, however, any express provision for the issuance of warrants of arrest by local health authorities and without any delegation of authority to the State Department of Health for promulgation of rules and regulations.

In Ex Parte Hardcastle, 208 S.W. 531 (Tex.Crim 1919), the relator was held under a warrant issued by the San Antonio City Health Officer by virtue of his quarantine established under Article 4445; (then reading in its applicable parts exactly as it does now). The Court stated, even though the statute contained no express provision authorizing the issuance of arrest warrants, that

"The Legislature, under the police power, has authority to authorize the

establishment of quarantine regulations for the protection of the public against contagion from those persons whose condition is such as to spread disease, and, incident thereto, to authorize the arrest and detention of such persons; and such, we understand, is the purpose of the statute in question. Under its terms, the proper health officer may issue a warrant by virtue of which a lawful arrest may be made without preliminary thereto affording the person affected a hearing; but if, after arrest, such person challenges the right of the authorities to continue the detention, the fundamental law accords him the right to have the legality of his detention inquired into by a proper court in a habeas corpus proceeding. The law denies to no one restrained of his liberty without a hearing the right to prove in some tribunal that the facts justifying his restraint do not exist. Ruling Case Law, vol. 6, p. 435, § 449. The health authorities causing the arrest of a relator derive their power to do so from the alleged existence of the fact that the relator is affected with the disease mentioned, and that her detention is required in the public interest to prevent contagion. If those facts do not exist, the officer has no jurisdiction to continue the restraint and the court in the habeas corpus proceeding has authority to inquire whether the facts essential to jurisdiction exist. *Ex parte Degener*, 30 Tex.App. 566, 17 S.W. 1111." (Emphasis supplied)

Again, the same conclusion has been reached by the Court in *Ex Parte James*, 181 S.W.2d 83 (Tex.Crim. 1944); and *Ex Parte Gilbert*, 135 S.W.2d 718 (Tex.Crim. 1940), under the same state of facts as existed in *Hardcastle*. These cases stand for the proposition that a grant by the Legislature to the health authorities of the power to quarantine necessarily carries with it the power to issue warrants of arrest. Since the powers conferred upon the health authorities by the Tuberculosis Code are much greater than

those conferred by Article 4445, it would follow that at least the same powers may be exercised by them as have been approved by the Court in the cases cited above.

SUMMARY

Local city and county health officers are authorized to issue warrants of arrest for the removal of persons infected with tuberculosis in an infectious and contagious state to a tuberculosis hospital under the provisions of Article 4477-11, V.C.S.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: 

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Assistant Attorney General

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APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
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