THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN
ATTORNEY GENERAL

April 6, 1967

Honorable George T. Hinson
Chairman
House Education Committee
House of Representatives
Austin, Texas

Opinion No. M-49

Re: Constitutionality of House Bill 659 which would authorize state-supported institutions to establish clothing and appearance requirements.

Dear Mr. Hinson:

You have requested the opinion of this office as to whether House Bill 659, as proposed by the 60th Legislature, 1967, is constitutional.

Section 1 of House Bill 659 provides that:

> "The administrative authorities of any state-supported institution may establish minimum standards for attire and personal appearance for all persons who are officially admitted to the use of the facilities of such an institution, committed or confined by law to such an institution, or employed by such an institution."

In the case of Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932), a student of the School of Medicine of the University of Texas had been dismissed for failure to maintain the minimum grade requirements which had been adopted by the administration of the University of Texas. In upholding the authority of the University officials to promulgate these regulations, the Court stated in its opinion that:

> ". . .The authorities sustain certain general rules with regard to the government of institutions supported and maintained by the state. In 24 R.C.L. pp. 575-576, § 24, the rule is announced as follows: 'The courts will not interfere with the exercise of discretion by school directors in matters confided

> by law to their judgment, unless there is a clear abuse of the discretion, or a violation of law. So the courts are usually disinclined to interfere with regulations adopted by school boards, and they will not consider whether the regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board. Acting reasonably within the powers conferred, it is the province of the board of education to determine what things are detrimental to the successful management, good order, and discipline of the schools and the rules required to produce these conditions. The presumption is always in favor of the reasonableness and propriety of a rule or regulation duly made. The reasonableness of regulations is a question of law for the courts.'
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> "In 24 R.C.L., pp. 646, 647, § 105, the following rule is announced: 'The enjoyment of the right of attending the public schools is necessarily conditioned on compliance by pupils with the reasonable rules, regulations, and requirements of the school authorities, breaches of which may be punished by suspension or expulsion. Ordinarily the school authorities have the right to define the offenses for which the punishment of exclusion from school may be imposed, and to determine whether the offense has been committed, the limitation on this authority being that it must in both respects be reasonably exercised. The power of expulsion given to the directors is not limited to cases of infraction of such rules as they may have theretofore adopted, but extends to cases where they may have become satisfied that the interests of the school require the expulsion of a pupil on account of his gross misbehavior, and the discretion vested in school authorities in this respect is very broad, but they will not be permitted to be arbitrary.'" (Emphasis added.)

See also the case of Cornette v. Aldridge, 408 S.W.2d 935 (Tex. Civ.App., 1966, error ref., n.r.e.).

In view of the foregoing authorities, we are of the opinion that it would not be unconstitutional for the Legislature

of the State of Texas to delegate to the administrative authorities of state-supported institutions the authority to establish minimum standards for attire and personal appearance of persons admitted, committed, or employed by such institutions as is proposed in House Bill 659. However, any such minimum standards for attire and personal appearance adopted by the administrative authorities of state-supported institutions would have to be reasonable. In this connection, the issue of whether a particular standard adopted by the administrative authorities of a state-supported institution is reasonable, can only be resolved by the courts upon a consideration of the particular minimum standard in question.

While we are of the opinion that it would not be unconstitutional for the Legislature to delegate to the administrative authorities of state-supported institutions the authority to establish minimum standards for attire and personal appearance, it must also be pointed out that House Bill 659 must comply with the provisions of Section 35 of Article III of the Constitution of Texas which is set forth as follows:

> "No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed."

The caption of House Bill 659 provides that it is an act:

> ". . .authorizing state-supported institutions to establish clothing and appearance requirements for persons availing themselves of the services offered by the institution. . . ." (Emphasis added.)

However, Section 1 of House Bill 659 authorizes state-supported institutions to establish these requirements for all persons:

> ". . .admitted to the use of the facilities of such an institution, committed or confined by law to such an institution, or employed by such an institution." (Emphasis added.)

In the case of Sutherland v. Board of Trustees of Bishop Independent School District, 261 S.W. 489 (Tex.Civ.

App. 1924, error ref.), the court had before it the issue of whether a particular act of the Legislature was in violation of Section 35 of Article III of the Constitution of Texas. The court in its opinion stated:

> "The title of the act in question affirmatively purports to affect two existing districts, which are expressly designated for that purpose, and by clear and impressive implication negatives any purpose to legislate as to the two unnamed districts, and no one on reading the title could possibly understand or infer from its recitals that the provisions in the body of the act effectually deprive the Aqua Dulce and No. 4 districts of substantial portions of their territory, population, and revenues. The true test to be applied in cases of this character is: Does the title fairly give notice by its recitals, to all persons concerned, of the subject matter of the act? If by its title it appears to affect only the residents of particularly designated localities, while the provisions in the body of the bill affect other localities or territory, then the title is misleading and unconstitutional, in so far as it affects the unnamed places." (Emphasis added.)

While such cases as Lee v. State, 163 Tex. 89, 352 S.W.2d 724 (1962), hold that captions of legislative enactments should be liberally construed so as to uphold the validity of the enactment if possible, we are of the opinion that House Bill 659 does not presently meet the requirements of Section 35 of Article III of the Constitution of Texas and the test set out in Sutherland v. Board of Trustees of Bishop Independent School District, supra. The title or caption of House Bill 659 appears to affect only those persons availing themselves of the services offered by the state-supported institutions. However, the provisions in the body of House Bill 659 disclose that the enactment also affects those persons committed or confined by law to such institutions and those persons employed by such institutions.

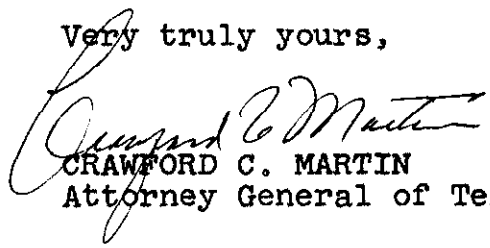
In view of the foregoing, we are of the opinion that House Bill 659 in its present form is in violation of Section 35 of Article III of the Constitution of Texas, insofar as it pertains to those persons committed or confined by law to state-supported institutions and those persons employed by state-supported institutions.

SUMMARY

House Bill 659, as proposed by the 60th Legislature is constitutional insofar as it delegates to the administrative authorities of state-supported institutions the authority to establish minimum standards for attire and personal appearance of persons admitted, committed or employed by such institutions.

House Bill 659, in its present form, violates the caption requirements of Section 35 of Article III of the Constitution of Texas insofar as it pertains to those persons committed or confined by law to state-supported institutions and those persons employed by state-supported institutions.

Very truly yours,



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