



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

December 9, 1971

Honorable J. E. Peavy
Commissioner of Health
Texas State Department of
Health
Austin, Texas 78756

Opinion No. M-1013

Re: Authority of the Department
of Health to purchase shoulder
patches for use in the enforce-
ment of Article 4590b, V.C.S.

Dear Dr. Peavy:

Your request for an opinion on the above subject matter asks the following question:

"Under the above stated fact situation, does Article 4590b, V.C.S., authorize and empower this agency to purchase shoulder patches for the above stated purpose?"

You have stated in your request that pursuant to the provisions of Article 4590b, Vernon's Civil Statutes, the Texas State Department of Health has adopted certain rules and regulations requiring those persons operating public and private emergency ambulances licensed by the State Board of Health to wear shoulder patches issued by the Texas State Department of Health.

The purpose of this regulation is to facilitate the identity of those persons holding a current and valid certificate. Section 1 of Article 4590b, Vernon's Civil Statutes, provides:

"Section 1. No person, firm or corporation shall operate or cause to be operated in the State of Texas, any emergency ambulance, public or private, or any other vehicle commonly used for the transportation or conveyance of the sick or injured, without first securing a permit therefor from the State Board of Health as hereinafter provided."

Section 3 provides in part:

"Every such ambulance or vehicle hereinabove described, when in service, shall be accompanied by at least one person who has acquired theoretical or practical knowledge in first aid

as prescribed and certified by the American Red Cross, evidenced by a certificate issued to such person by the State Board of Health."

Section 4 authorizes the State Board of Health to prescribe rules and regulations for the purpose of carrying out the provisions of the Act.

You state in your request that the Comptroller of Public Accounts has questioned the purchase of such shoulder patches on a theory stated in Attorney General's Opinion V-1365 (1951), wherein it is stated:

"The very broad purposes and over-all policies of our State soil conservation laws are set forth in Section 2 of Article 165a-4, V.C.S. It is difficult to conceive of a greater, and at the same time valid, grant of powers or of one more general in terms than that bestowed upon the State Soil Conservation Board by Section 4 of Article 165a-4, V.C.S., and upon the supervisors of soil conservation districts by Section 7, Article 165a-4, substantially re-enacted in Section 4E, Article 165a-8, V.C.S. (H.B. 97), and Section 13 of House Bill 190. Nevertheless, we do not believe that the Legislature intended to authorize the expenditure of either State appropriated or local funds for the giving of awards for essay contests on various soil conservation subjects, or for the giving of awards for various soil conservation projects, or for the purchase of entertainment for the promotion of soil conservation. A presumption will be indulged that the Legislature desired and intended to enact a valid law, Pickle v. Finley, 91 Tex. 484, 44 S.W. 480 (1989); Maud v. Terrell, 109 Tex. 97, 200 S.W. 375 (1918); 9 Tex. Jur. 481, Constitutional Law, Sec. 61. Since a statutory authorization for expenditures for the purposes enumerated in subdivisions A, C and D of your third question would be unconstitutional, as we will hereinafter show, we are of the opinion that such expenditures were not contemplated or authorized by the Legislature. Section 52 of Article III of the Constitution of Texas provides:

"The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or

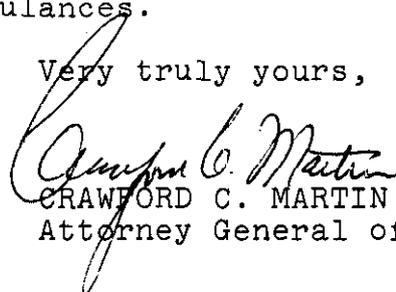
to any individual, association, or corporation whatsoever,"

It is noted that the expenditures prohibited in Attorney General's Opinion V-1365 (1951) constituted a gift or donation to the individual in violation of the Constitution. In the instant case, however, the shoulder patches involved are indicia used solely for the purpose of carrying out the provisions of Article 4590b, Vernon's Civil Statutes. Therefore, the expenditure of public funds is for a governmental purpose and does not constitute a gift or donation. See Aransas Pass v. Keeling, 112 Tex. 339, 247 S.W. 818 (1923); State v. City of Austin, 160 Tex. 348, 331 S.W.2d 737 (1960). You are therefore advised that the State Department of Health has the authority to purchase shoulder patches to be issued to persons certified by the State Board of Health in order to facilitate identification of such persons in the enforcement of the provisions of Article 4590b, Vernon's Civil Statutes.

S U M M A R Y

The State Department of Health has the authority to purchase shoulder patches to be used in the enforcement of the provisions of Article 4590b, Vernon's Civil Statutes, regulating the operation of emergency ambulances.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by John Reeves
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

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