



**THE ATTORNEY GENERAL
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March 13, 1972

Hon. James E. Peavy, M.D.
Commissioner of Health
Texas State Department of Health
Austin, Texas 78756

Opinion No. M-1094

Re: Whether the phrase "shall receive no remuneration or compensation for blood so donated", as used in Article 4447j, Vernon's Civil Statutes, includes non-monetary gratuities extended by a blood bank to a donor 18-21 years of age.

Dear Dr. Peavy:

Your recent request for an opinion concerning the above referenced matter states, in part, as follows:

"As you know, this department is charged with licensing hospitals under the 'Texas Hospital Licensing Law' referred to in Article 4447j and in such capacity respectfully requests your opinion as to the following questions:

"1. Does the language 'shall receive no remuneration or compensation for blood so donated', as contained in Article 4447j, include non-monetary gratuities extended by the blood bank to a donor, such as blood replacement credits (a promise to replace the blood donated by that donor when the need arises) or other plans or programs which serve to insure that the future blood needs of the donor will be wholly or partially satisfied as a result of his donation of blood?

"2. Does the inclusion of the language 'shall receive no remuneration or compensation for blood so donated' as contained in Article 4447j prohibit the providing of any gratuity extended by the blood bank to the donor in anything other than money for the donation of the blood?"

Article 4447j, Vernon's Civil Statutes,¹ reads as follows:

¹Acts 62nd Leg., R.S. 1971, H.B. 663, ch. 417, p. 1556.

"Any person 18 years or older has the capacity to donate his blood to the American Red Cross, a blood bank operating under the supervision of a licensed physician or a hospital licensed under the provisions of the Texas Hospital Licensing Law provided, however, that such donee between the age of 18 and 21 shall receive no remuneration or compensation for blood so donated." (Emphasis added.)

Your inquiry concerns only the underscored portion of this Article.

Our answer to your first question is that any donee named in this Article may contract with a donor between the ages of 18 and 21 for blood replacement to the donor, or for other plans or programs which serve to insure that the future blood needs of the donor will be wholly or partially satisfied as a result of his donation of blood.

We do not discern any intent by the Legislature to make any impediment to any arrangements between a donor of blood within this age bracket and any authorized donee concerning any subsequent replacement of blood into the body of the donor or for his own personal necessary medical usage.

In view of our answer to your first question we refrain from answering your second question.

"Remuneration" has been defined as follows: "something that remunerates: recompense, pay." Webster's Third New International Dictionary (Rev. Ed. 1966) 1921. "Compensation" has been defined thusly: "payment for value received or service rendered: remuneration." Id. at 463. In accord, Black's Law Dictionary, Fourth Ed., p. 354. This is the ordinary signification required to be given to the words. Article 10, Vernon's Civil Statutes.

The word "gratuity" as used in your request would seem antagonistic to the ordinary meaning of that word, if the "gratuities" are to be considered an exchange for blood. A "gratuity," by definition, is not "remuneration" or "compensation." A "gratuity" is "Something acquired without bargain or inducement . . . Something given freely or without recompense; a gift . . ." Black's Law Dictionary, Fourth Ed., p. 830. Let us suppose that an eighteen year old donates a pint of blood for the use and benefit of an ailing parent, and after the blood is drawn, the hospital gives him a glass of orange juice and the other parent, or an older sibling, treats him to a steak dinner.

We cannot perceive any legislative intent to deny to this eighteen year old either the orange juice or the steak. Nor do we see any intent to deny to our eighteen year old his right to build up a reserve of blood credit for his own use. This is analogous to depositing his money in a bank. In either instance, he makes his own available for his future use.

The obvious intent of the statute is to prevent young people abusing their bodies by excessive sale of their blood. The prohibition of sale is necessary because of lack of an objective means to determine the frequency and quantity of blood drawings. Any means by which blood is sold or exchanged is prohibited by the statute. Conversely, donation of blood, for whatever reason, is not prohibited by the statute. There is no prohibition against gratuities unless a nominal gratuity is in reality a subterfuge to effect a sale or exchange.

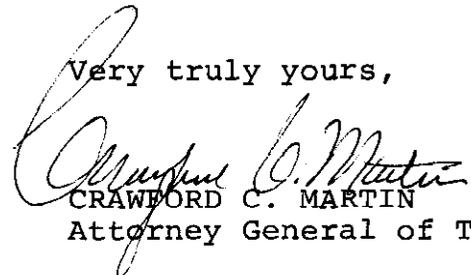
We do not consider credits in a blood bank either compensation, remuneration, or gratuity. We consider them credits; just as money deposited in a money bank, is a credit. A credit does not constitute an exchange or sale. Each individual may choose whether to donate or deposit for credit. In either event, the choice of terminology does not create compensation, remuneration, or gratuity.

The statute prohibits neither blood bank credits, nor actual gratuities.

S U M M A R Y

Article 4447j, Vernon's Civil Statutes, in relation to donation of blood by those between the ages of 18 and 21, prohibits neither blood bank credit nor actual gratuities.

Very truly yours,


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