



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

March 21, 1977

The Honorable Ben Z. Grant  
Chairman  
House Judiciary Committee  
State Capitol  
Austin, Texas 78701

Letter Advisory No. 121  
  
Re: Constitutionality  
of bill to create a  
department on the status  
of women.

Dear Chairman Grant:

You have asked two questions about the constitutionality of House Bill 875 which would establish within the office of the Attorney General a Texas Department on the Status of Women. The proposed department would collect and distribute information on the legal status, opportunities, needs, and contributions of women in Texas, report to the governor and legislature its findings on laws that impose special burdens on women, and recommend legislation relating to subjects it had studied. The bill directs the Attorney General to supervise the work of the department, assisted by a fifteen member advisory board appointed by him. The department would be abolished effective September 1, 1983, unless continued by law.

Your first question is as follows:

Would the creation of a Status of Women Commission in the State of Texas be constitutional as it relates to the Equal Rights provision in Article 1, Section 3(a) of the Texas Constitution?

Article 1, section 3a of the Texas Constituion provides that:

Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin. This amendment is self-operative.

This amendment required the state to treat men and women equally, in the absence of any compelling state interest. Attorney General Opinion H-432 (1974). Legislative classifications based on sex must be closely scrutinized for discrimination. See J. Sampson, The Texas Equal Rights Amendment and the Family Code: Litigation Ahead, 5 TEX. TECH. L. REV. 631 (1974), and The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 YALE L.J. 871, 889 (1971). House Bill 875 does not create any classifications based on sex, or affect the legal rights or duties of anyone, except for those persons responsible for carrying out its provisions. It merely provides for a department that will gather information on the status of women. We do not believe that the existence of such a department abridges or denies "[e]quality under the law . . . because of sex . . ." The Texas Department on the Status of Women may in fact contribute to the implementation of the Equal Rights Amendment by recommending revision of certain state laws that classify on the basis of sex. See C. Treece, The ERA and Texas Marital Law, 54 TEXAS L. REV. 590 (1976) and The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 YALE L.J. at 911.

Your second question is as follows:

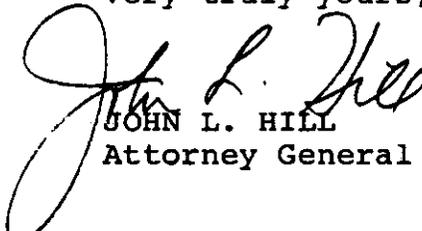
Would the passage of H. B. 875, creating a Department on the Status of Women in the Office of the Attorney General, be constitutional as it would serve as an agency or branch of an existing state department?

The Attorney General is a constitutional officer. Article 4, section 22 of the Texas Constitution defines some of his duties, and states that he shall "perform such other duties as may be required by law." The Legislature has delegated him many other duties, some of which require him to work with other officers or departments of the State. See, e.g., V.T.C.S., art. 4396 (report to the comptroller on the status of collection suits); V.T.C.S., art. 6823a, §6(a) (approve of travel regulations for state employees); Code Crim. Proc. art. 51.13 §4 (assist governor in administration of Uniform Criminal Extradition Act). The Legislature may give the Attorney General the additional duties proposed in House Bill 875.

The Attorney General is a member of the executive department of the State. Tex. Const. art. 4, §1. Article 2, section 1 of the Texas Constitution, which provides for the separation of powers, prevents him from exercising legislative or judicial powers, except as expressly permitted in the constitution. State v. Moore, 57 Tex. 307 (1882); Department of Public Safety v. Great Southwest Warehouses, 352 S.W.2d 493 (Tex.Civ.App. -- Austin 1961, writ ref'd n.r.e.). We do not believe that House Bill 875 confers on the Attorney General any legislative or judicial powers and thus it would not violate article 2, section 1 of the Texas Constitution.

We find no constitutional provision that prevents the establishment of a department on the status of women in the Attorney General's office. We note that the Legislature has in the past required an administrative board to function within an existing department. In Attorney General Opinion H-248 (1974) we discussed the Mobile Home Standards Act, which gave responsibilities to both the Bureau of Labor Statistics and an independent Performance Certification Board. Acts 1971, 62nd Leg., ch. 896, §1, at 2765; see Attorney General Opinion H-411 (1974). In 1973, the Legislature did not fund the Performance Certification Board separately, but instead placed the funds for enforcement of the Mobile Home Standards Act within the Bureau of Labor Statistics. It thus established one administrative entity within another, as House Bill 875 proposes to do with the Texas Department on the Status of Women and the Attorney General's office.

Very truly yours,

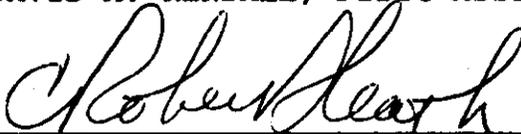


JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee