



# THE ATTORNEY GENERAL OF TEXAS

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March 24, 1977

The Honorable Ben Z. Grant  
Chairman  
House Judiciary Committee  
P. O. Box 2910  
Austin, Texas 78767

Letter Advisory No. 125

Re: Whether a change in  
the method of execution  
could be applicable to  
persons sentenced before  
the change in the law.

Dear Chairman Grant:

You have requested our opinion concerning the application of House Bill 945, which would provide for executions by intravenous injection of a lethal substance. You ask:

Could a change in the method of execution be applicable, under the Texas or United States Constitution, to persons tried and sentenced to death prior to the effective date of the proposed legislation?

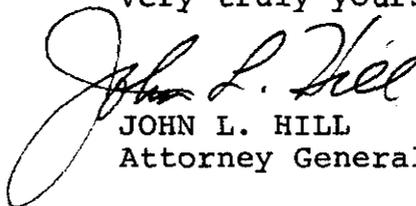
In Ex parte Johnson, 258 S.W. 473 (Tex. Crim. App. 1924), the court addressed the constitutionality of a retroactive application of a statute changing the method of execution from hanging to electrocution. The court upheld the application of the statute to a person convicted prior to its effective date, relying upon Malloy v. State of South Carolina, 237 U.S. 180 (1915). In Malloy the court upheld the retroactive application of the South Carolina electrocution statute, stating:

The statute under consideration did not change the penalty-death-for murder, but only the mode of producing this together with certain non-essential details in respect of surroundings. The punishment was not increased and some of the odious features incident to the old method were abated.

Id. at 185. The Court further noted that the constitutional limitation regarding ex post facto laws would be applicable only where an additional penalty is provided after the offense was committed. This rule expresses the law under both the Texas and United States Constitutions. Ex parte Scott, 471 S.W.2d 54 (Tex. Crim. App. 1971).

Under these authorities, the provision of House Bill 945 could be constitutionally applied retroactively; the method of execution may be altered subsequent to the trial and sentence of a person so long as the new method is no more onerous than the old.

Very truly yours,

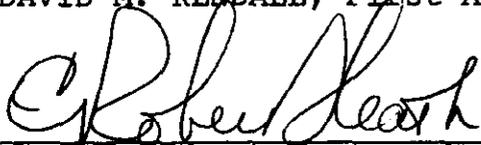


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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee