



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL**  
ATTORNEY GENERAL

April 25, 1974

The Honorable Carl C. Hardin, Jr.  
Executive Secretary  
Texas State Board of Dental Examiners  
Capital National Bank Building  
Austin, Texas 78701

Opinion No. H-283

Re: Construction of Senate  
Bill 222, 63rd Legislature,  
Regular Session, 1973

Dear Mr. Hardin:

You have requested our opinion as to the effect of certain amendments to the Dental Practice Act made by the 63rd Legislature and now codified as Articles 4551d(1) and 4551f(6), V. T. C. S. In your request you advise that Texas dentists commonly patronize dental laboratories and dental technicians situated outside the state. Prescriptions for dental restorations needed by these dentists' patients are sent to out-of-state laboratories for fabrication by the dental technicians employed there. Most of the dental work done by these foreign laboratories is returned through the mails. You ask whether the amendments to the Dental Practice Act made by the 63rd Legislature now prohibit out-of-state dental laboratories and dental technicians from filling a prescription for dental work submitted by a Texas dentist for one of his patients.

Article 4551d(1) empowers the Texas State Board of Dental Examiners to adopt rules and regulations pertaining to dental laboratories and dental technicians. Article 4551f(6)(a) requires dental laboratories and dental technicians to register with the Board as follows:

"(6)(a) It shall be the duty of the owner, owners, and manager of each dental laboratory in this State to annually apply to and register each dental laboratory in this State with which he has any connection or interest with the Texas State Board of Dental Examiners on or before March 1 of each calendar year and to pay in con-

nection with such application a fee of not less than \$25 nor more than \$200 as determined by the Board according to the needs of the Board to the Dental Registration Fund, and such application shall set forth such facts as the Board may require. It shall also be the duty of each dental laboratory technician registered pursuant to this Act and as provided by the Texas State Board of Dental Examiners in its rules and regulations to annually apply to and to register with the Texas State Board of Dental Examiners on or before March 1 of each calendar year, and to pay in connection with such application a fee of not less than \$10 nor more than \$25 as determined by the Board according to the needs of said Board to the Dental Registration Fund, and such application shall set forth such facts as the Board may require; further, a list of all other employees of a dental laboratory who are not required to register hereunder shall be furnished quarterly to the Texas State Board of Dental Examiners and to the Dental Laboratory Advisory Board as provided in the rules of the Board. "

Subsection (c) of Article 4551f(6) provides:

"(c) From and after the effective date of this Act, it shall be unlawful for anyone other than a dental laboratory or dental technician duly registered hereunder, to fill any prescription for a dental prosthetic appliance or the repair thereof, to be delivered by a licensed dentist in this State to a dental patient. "

An interpretation of Subsection (c) that prohibited out-of-state dental laboratories or technicians from filling prescriptions for Texas dentists would clearly be suspect as imposing an undue burden on interstate commerce. We need not reach that question because we interpret that subsection to provide no more than that, before any laboratory or technician - regardless of where it or he is located - can fill a prescription submitted by a Texas dentist

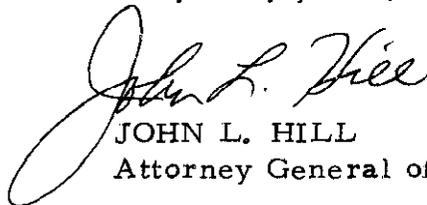
for one of his patients, it must first be duly registered in accordance with the provisions of Article 4551f(6)(a). While Article 4551f(6)(a) requires all Texas dental laboratories and technicians to register with the Board, it does not preclude out-of-state laboratories or technicians from also registering under its provisions if they wish to service Texas dentists. Thus under Article 4551f(6) of the Dental Practice Act an out-of-state dental laboratory or technician is not precluded from filling prescriptions for Texas dentists so long as it or he has registered in accordance with the provisions of subsection(a).

We incidentally note that it has long been settled that the Legislature may regulate the practice of dentistry and related skills in this manner under its police powers. Semler v. Dental Examiners, 294 U.S. 608(1935) and Carp v. Texas State Board of Examiners in Optometry, 401 S. W. 2d 639 (Tex. Civ. App., Dallas, 1966), rev'd on other grounds, 412 S. W. 2d 307 (Tex. 1967). In our opinion any burden imposed upon interstate commerce by our interpretation of Article 4551f(6) is neither undue nor clearly excessive in relation to the local health benefits to be derived from these provisions. See Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960) and Dixie Dairy Company v. City of Chicago, 355 F. Supp. 1351 (N. D. Ill. 1973).

#### SUMMARY

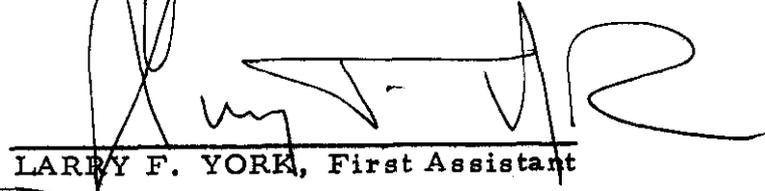
Article 4551f(6)(c), V. T. C. S., does not prohibit out-of-state dental laboratories or technicians from filling prescriptions for Texas dentists so long as they have registered with the Texas State Board of Dental Examiners in accordance with the provisions of Article 4551f(6)(a).

Very truly yours,



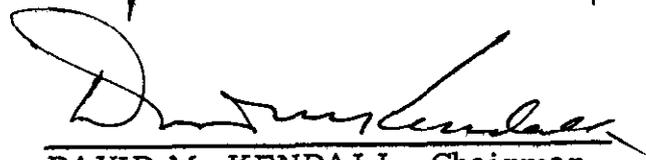
JOHN L. HILL  
Attorney General of Texas

APPROVED:



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LARRY F. YORK, First Assistant



A handwritten signature in black ink, appearing to read 'David M. Kendall', written over a horizontal line.

DAVID M. KENDALL, Chairman  
Opinion Committee