



**THE ATTORNEY GENERAL
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ATTORNEY GENERAL**

May 14, 1974

The Honorable Ron Jackson
Acting Executive Director
Texas Youth Council
201 E. 14th Street
Austin, Texas 78701

Opinion No. H- 302

Re: The meaning of mentally
ill and feeble-minded as
used in Section 30 of
Article 5143d, V. T. C. S.

Dear Mr. Jackson:

Article 5143d, Vernon's Texas Civil Statutes, creates the Texas Youth Council "to administer the state's correction facilities for delinquent children" (Sec. 1). Section 30 of the Article provides:

"Whenever the Youth Council finds that any delinquent child committed to it is mentally ill, feeble-minded or an epileptic, the Youth Council shall have the power to return such child to the court of original jurisdiction for appropriate disposition or shall have the power to request the court in the county in which the training school is located to take such action as the condition of the child requires. In no case will the Youth Council upon the determination of such a finding related to any such child committed to its custody delay returning the child to the committing county or make application to the proper court for appropriate handling of the case beyond the minimum time necessary for the removal of the child from its facilities in accordance with law."

You have asked us to define "mentally ill" and "feeble-minded" as used in that section.

Article 5143d was enacted in 1957 (Acts 1957, 55th Leg., ch. 281, p. 660). Title 59 of the Texas Statutes is entitled "Feeble Minded Persons". However, Articles 3867 and 3871, which dealt generally with the commitment of so-called "feeble-minded" persons, have been replaced by The Mentally

Retarded Persons Act, Article 3871b, V. T. C. S., infra, and The Mental Health and Mental Retardation Act, Articles 5547-201 to 5547-204, V. T. C. S., infra. None of those Articles define "feeble-minded" and the term now appears only in Article 3871a, V. T. C. S., which refers to "a State school for the feeble-minded or mentally retarded," still without defining "feeble-minded."

While the terms "mentally ill", "feeble-minded", and "mentally retarded" are obviously not synonymous terms, and there exists a real need of legal refinement of them, we believe that, for the purposes of your inquiry, the term "feeble-minded" was probably used to denote the concept of mentally retarded. For example, the Family Code, V. T. C. S., treats mentally ill children in Sec. 55.02 and mentally retarded children in Sec. 55.03. And compare Articles 5547-4 and 5547-201, V. T. C. S.

Article 5547-4, V. T. C. S., the definition section of The Mental Health Code does not define "mentally retarded". It does define "mentally ill person" as: ". . . a person whose mental health is substantially impaired . . ."

The Mentally Retarded Persons Act, Article 3871b, V. T. C. S., in its Sec. 3(1) defines a "mentally retarded person" as:

" . . . any person, other than a mentally ill person, so mentally deficient from any cause as to require special training, education, supervision, treatment, care or control for his own or the community's welfare."

In The Texas Mental Health and Retardation Act, Article 5547-201, V. T. C. S., et seq., the same term is defined in substantially the same language. The Texas Education Code, Sec. 26.01, in connection with provisions for rehabilitation districts, defines a "mentally retarded person" as

" . . . any person six years of age or older, who, because of retarded intellectual development, cannot be educated safely and adequately in the public schools

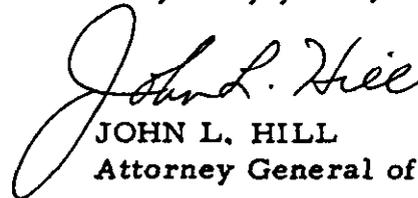
with normal children or in readily accessible training institutions in the home environs of such person, but who may be expected to benefit from special education or training facilities designed to make him economically useful and socially adjusted."

We therefore answer your question that "mentally ill" as used in Article 5143d, V. T. C. S., refers to those persons whose mental health is substantially impaired. "Mentally retarded" on the other hand, refers to those whose mental development is deficient to the degree that they need special education, care and treatment but who, with such special education, care, and treatment may become productive members of society.

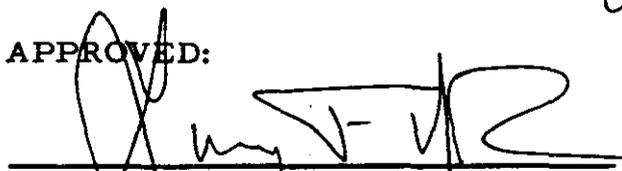
S U M M A R Y

"Feeble-minded," as used in Article 5143d, V. T. C. S., Sec. 30, authorizing the Youth Council to return mentally-ill or feeble-minded children, is probably used to denote one who is "mentally retarded", which is defined by statute as a deficiency in mental development. "Mentally ill", on the other hand, means substantial impairment of mental health.

Very truly yours,


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APPROVED:


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