



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 1, 1988

Mr. Bobby Gierisch
Executive Director
Joint Select Committee for
Workers' Compensation Insurance
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78711

LO-88-74

Dear Mr. Gierisch:

The Joint Select Committee on Workers' Compensation Insurance [hereinafter the committee] was created pursuant to House Concurrent Resolution No. 27 [hereinafter H.C.R. 27] during the Second Called Session of the 70th Legislature. The committee is directed to "conduct a detailed study of the workers' compensation system in Texas, the impact of the system on employees and employers, and how other states have addressed the problems that Texas now faces. . . ." Acts 1987, 70th Leg., 2d C.S. at 920. H.C.R. 27 specifically authorizes the committee

to request assistance, where needed in the discharge of its duties, of the Industrial Accident Board, the State Board of Insurance, the attorney general's office, the Texas Rehabilitation Commission, and all other state agencies, departments, and offices; that it be the duty of such agencies, departments, and offices to assist the committee when requested to do so; and that the committee be authorized to inspect the records, documents, and files of every agency, department, and office of the state to the extent necessary to discharge its duties within the area of its jurisdiction

Acts 1987, 70th Leg., 2d C.S. at 921.

Pursuant to this specific authorization, the committee has received information from the Industrial Accident Board, including information contained in various workers' compensation claim files. You ask whether disclosure of the

identities of claimants to a private corporation with which you intend to contract for certain services would violate article 8307, section 9a, V.T.C.S., the Workers' Compensation and Crime Victims' Compensation Act, and concomitantly section 10(a) of article 6252-17a, V.T.C.S., the Open Records Act. Under the facts that you have presented to us, we conclude that neither act would be violated.

Your letter requesting our decision states the following:

Information in a workers' compensation claim file of the Industrial Accident Board is confidential pursuant to Section 9a, Article 8307, Vernon's Texas Civil Statutes, and is excepted from public disclosure under the Texas Open Records Act, Subsection 3(a)(1).

If the Joint Select Committee on Workers' Compensation Insurance contracts with Southwestern Bell Telephone Company to have Southwestern Bell conduct a search of its database to determine the current addresses and telephone numbers of workers' compensation claimants in order to fulfill the research needs of the Committee, would either the Committee's or Southwestern Bell's actions be in violation of the above referenced statutes?

The Committee would furnish Southwestern Bell with the names and last-known addresses and telephone numbers of workers' compensation claimants. The Committee further contemplates a contract with Southwestern Bell under which Southwestern Bell would agree not to publish, disclose or distribute the information it receives from the Committee and to return such information to the Committee upon completion of the services contracted for.

Subsection 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Information contained in workers' compensation claim files is made confidential by statute, specifically section 9a of article 8307, and thereby falls under subsection 3(a)(1). Section 10(a) of the Open Records Act prohibits the release of information deemed confidential by law.

Section 9a of article 8307 governs the confidentiality of records submitted to the Industrial Accident Board and provides in part:

(a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this section.

. . . .

(l) This section does not give authority to withhold information from committees of the legislature to use for legislative purposes.

(m) Any information pertaining to a worker's compensation file which is confidential by virtue of any of the terms of this Act shall retain such confidentiality when released to any investigative, legislative, or law enforcement agency including the attorney general, district attorneys, grand juries, or legislative committees. Any individual who shall publish, disclose, or distribute any such confidential information which is possessed by any investigative, legislative, or law enforcement agency to any other individual, corporation, or association not entitled to have received such information directly from the Industrial Accident Board under the provisions of this law commits an offense. An offense under this subsection is a Class A misdemeanor. Any district court of Travis County shall have jurisdiction to enjoin possession and the use by any individual, corporation, or association of any information made confidential by this Act when such possession or use is not authorized by this Act. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has made application for employment, provided such information was lawfully acquired by the employer releasing the same.

(n) Nothing herein prohibits any person from receiving from the Industrial Accident Board all information contained in any record or file of the Industrial Accident Board begun after September 1, 1971, in statistical form and in a manner so as not to disclose

the name or identity of any person, except as provided in this section.

Section 9a(1) of article 8307 does not authorize the board to withhold from the joint committee information that is confidential in the custody of the board. Subsection (m) of section 9a specifically provides that any such information shall retain its confidential character when released to, inter alia, any legislative committee. Therefore, information released to the committee by the board that is confidential in the custody of the board remains confidential in the custody of the committee.

Subsection (m) of article 8307 further provides that any person who discloses any such confidential information that is possessed by, inter alia, a legislative committee to any other individual or corporation that is not entitled to receive such information directly from the board commits a misdemeanor and that any individual or corporation so receiving such information also commits a misdemeanor. Article 8307 does not directly authorize Southwestern Bell to receive from the board the information at issue. Therefore, the committee may not disclose such information to Southwestern Bell unless it is authorized to make Southwestern Bell its agent for purposes of section 9a(1) of article 8307. If the committee is so authorized, then the information retains its confidential character if released to Southwestern Bell in the situation that you describe and no violation of either article 8307 or article 6252-17a will occur. The issue, then, is whether the committee is authorized by the resolution by which it was created to enter into a contract with Southwestern Bell that has the effect of making it the committee's agent.

H.C.R. No. 27 requires the committee to conduct a detailed study of the workers' compensation system in Texas and provides that

the study may include but need not be limited to the following items:

(1) a study to gather information relating to the procedure for the payment of claims;

(2) a determination of the actual impact of the workers' compensation system on economic development and job creation;

(3) an investigation of the system provided by current Texas law for the delivery of workers' compensation benefits to

injured workers to determine whether or not that system is the most efficient possible;

(4) a comprehensive study of the organization and operation of the Industrial Accident Board;

(5) a probe into the means and methods by which employers may seek indemnification against claims for workers' compensation benefits;

(6) a study of job safety in general and how to provide additional incentives to employers and employees to increase safety in the workplace;

(7) an investigation of the workers' compensation assigned risk pool generally, with specific emphasis on finding ways to increase the efficiency of the pool and to decrease its operating costs;

(8) a study of the manner in which other jurisdictions have approached the problems Texas currently faces in the delivery of workers' compensation benefits; and

(9) any other matter calculated to yield useful data that could make the Texas workers' compensation system more efficient and more responsive to the needs of the most workers and employers (Emphasis added.)

Acts 1987, 70th Leg., 2d C.S. at 920-21.

H.C.R. No. 27 confers on the committee the following authority:

(1) to employ the staff persons appropriate to carry out the duties of the committee as provided by this resolution;

(2) to employ professional consultants, as appropriate, on a contract basis to conduct research into the process by which workers' compensation insurance rates are developed and audit the process by which workers' compensation benefits are delivered, as appropriate to comply with the charges given the committee created by this resolution;

(3) to seek and accept gifts, grants, contributions, or any other funds as appropriate to complete its study, unless prohibited by law;

(4) to visit or send staff to visit other jurisdictions to ascertain how those jurisdictions deal with the problems currently faced by Texas in the area of workers' compensation;

(5) to issue process and compel the testimony and attendance of witnesses in the manner provided by law and the rules of procedure of the senate and house of representatives; and

(6) to take whatever other action is appropriate under the charge given the committee by this resolution to the full extent allowed by law and by the rules of procedure of the senate and house of representatives. . . . (Emphasis added.)

We conclude that the language conferring authority on the committee is broad enough to permit the committee to enter into a consulting contract with Southwestern Bell that provides that the corporation search its database for the current addresses and telephone numbers of workers' compensation claimants. In such an instance, Southwestern Bell becomes an agent for the committee and the identities of such claimants will remain confidential.

Very truly yours,



Jim Moellinger
Assistant Attorney General
Opinion Committee

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