



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 19, 1996

Mr. Tommy V. Smith  
Executive Director  
Texas Department of Licensing  
and Regulation  
P.O. Box 12157  
Austin, Texas 78711

Letter Opinion No. 96-143

Re: Whether the administrative penalty authority granted to the Texas Department of Licensing and Regulation under section 91.021, Labor Code, resides in the commission or the commissioner (ID# 38644)

Dear Mr. Smith:

On behalf of the Texas Department of Licensing and Regulation (the "department"), your predecessor asked this office whether the Commissioner of Licensing and Regulation (the "commissioner") or the Commission of Licensing and Regulation (the "commission") had the authority to impose certain administrative penalties for violation of the Staff Leasing Services Act, codified as chapter 91 of the Labor Code. The department "is the primary state agency responsible for oversight of businesses, industries, general trades, and occupations regulated by this state as assigned to the department by the legislature."<sup>1</sup> It is an umbrella agency for the licensing and regulation of businesses and occupations that do not fit within the jurisdiction of agencies with more specifically defined authority.<sup>2</sup> Article 9100, V.T.C.S., establishes the department and describes its regulatory authority, while various other statutes authorize the department to regulate specific businesses and occupations.<sup>3</sup> The department is governed by a six member commission, appointed by the governor with the advice and consent of the senate, and by the commissioner, who is appointed to a one-year term by the commission.<sup>4</sup>

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<sup>1</sup>V.T.C.S. art. 9100, § 2(a).

<sup>2</sup>House Research Organization, Bill Analysis, H.B. 863, 71st Leg., R.S. (1989) at 4 (analysis of bill that continued the Texas Department of Labor and Standards after sunset review, restructuring it and renaming it the Texas Department of Licensing and Regulation).

<sup>3</sup>The department regulates, among other businesses, employment agencies, V.T.C.S. art. 5221a-7, industrialized housing and buildings, V.T.C.S. art. 5221f-1, boxing and wrestling, V.T.C.S. art. 8501-1, auctioneers, V.T.C.S. art. 8700, and air conditioning and refrigeration contractors, V.T.C.S. art. 8861. Oversight of inspecting boilers is also placed in the department. Health & Safety Code ch. 755.

<sup>4</sup>V.T.C.S. art. 9100, §§ 2(b), 3, 13.

Chapter 91 of the Labor Code authorizes the department to regulate staff leasing services.<sup>5</sup> Your question involves the following provision:

(a) *On a finding that a ground for disciplinary action exists under one or more provisions of Section 91.020(a), the department may:*

- (1) deny an application for a license;
- (2) revoke, restrict, or refuse to renew a license;
- (3) *impose an administrative penalty in an amount not less than \$1,000 for each violation, but not more than \$50,000;*
- (4) issue a reprimand; or
- (5) place the license holder on probation for the period and subject to conditions that the department specifies.<sup>6</sup>

You ask whether the authority to impose an administrative penalty of between \$1,000 and \$50,000 for each violation is to be exercised by the commission or the commissioner. In construing this provision, we should consider laws in *pari materia*, that is all laws related to the act and the general system of legislation of which the act forms a part.<sup>7</sup> Article 9100 creates the department and states the authority of the commission and of the commissioner in regulating the businesses assigned to the department. As a statute in *pari materia* with chapter 91 of the Labor Code, we will consult it in answering your question.

The commission "shall supervise the commissioner's administration of the department and shall formulate policy objectives for the department."<sup>8</sup> "The commissioner shall perform duties as

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<sup>5</sup>See, e.g., Labor Code §§ 91.002, .015, .016. "Staff leasing services" means an arrangement by which employees of a license holder are assigned to work at a client company, where the license holder and client company share employment responsibilities, the employee's assignment is intended to be of a long-term or continuing nature, and the majority of the work force at a worksite or a specialized group within the work force consists of assigned employees of the license holder. *Id.* § 91.001(11). The statute regulating staff leasing services was adopted to help assure the soundness of leasing companies, protect workers, and make sure that duties and responsibilities were spelled out. House Research Organization, Bill Analysis, H.B. 456, 73d Leg., R.S. (1993) at 3.

<sup>6</sup>Labor Code § 91.021(a) (emphasis added).

<sup>7</sup>*Reed v. State of Texas Dep't of Licensing and Regulation*, 820 S.W.2d 1, 2 (Tex. App.--Austin 1991, no writ). In *Reed*, the court construed the auctioneers' licensing statute and the Administrative Procedure and Texas Register Act in *pari materia*.

<sup>8</sup>V.T.C.S. art. 9100, § 12(a).

assigned by the commission or specified by law.”<sup>9</sup> He has some broad rule-making authority, including authority to “adopt rules as necessary to implement this article and other laws establishing programs regulated by the department,”<sup>10</sup> and to “adopt rules relating to the administrative sanctions that may be enforced against a person regulated by the department.”<sup>11</sup> If a person regulated by the department “violates a law establishing a regulatory program administered by the department or a rule or order adopted or issued by the commissioner relating to the program,” the commissioner has authority to issue a written reprimand, revoke or suspend the person’s license, or place on probation the person whose license has been suspended. Despite the broad authority that article 9100 gives the commissioner, authority to impose monetary penalties for violations reposes in the commission:

In addition to or in lieu of a sanction imposed [by the commissioner] under Subsection (a) of this section, the commission may assess an administrative penalty in an amount not to exceed \$1,000 for each violation.<sup>12</sup>

Since the department’s enabling statute places in the commission and not the commissioner the authority to impose a monetary penalty for violations of the laws it administers, we believe the authority to impose the monetary penalty established by section 91.021(a) of the Labor Code also belongs to the commission. Although both article 9100, V.T.C.S., and chapter 91 of the Labor Code assign important duties to the commissioner, authority to impose the \$1,000 to \$50,000 administrative penalty under chapter 91 is not assigned to him. Accordingly, we conclude that the authority to assess this penalty for violations of chapter 91 resides with the commission. Under its authority to assign duties to the commissioner, we believe the commission could authorize the commissioner to make recommendations as to the amount of the administrative penalty in specific cases or to otherwise assist in imposing it.

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<sup>9</sup>*Id.* § 13(a).

<sup>10</sup>*Id.* § 14(a).

<sup>11</sup>*Id.* § 17(a).

<sup>12</sup>*Id.* § 17(b); House Research Organization, Bill Analysis, H.B. 863, 71st Leg., R.S. (1989) at 3.

**S U M M A R Y**

The Texas Department of Licensing and Regulation administers the Staff Leasing Services Act, codified as chapter 91 of the Labor Code. Authority to assess a \$1,000 to \$50,000 administrative penalty for violations of Labor Code, chapter 91, resides with the Commission of Licensing and Regulation, and not with the commissioner. The commission is authorized to delegate to the commissioner authority to make recommendations as to the amount of the administrative penalty in specific cases or to otherwise assist in imposing it.

Yours very truly,



Susan L. Garrison  
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Opinion Committee