



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 7, 1997

Patti J. Patterson, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

Letter Opinion No. 97-066

Re: Whether the Texas Hazard Communication Act, chapter 502, Health and Safety Code, which provides "employees" with accessibility to certain information regarding hazardous chemicals at work sites, is applicable to inmates of the Texas Department of Criminal Justice (RQ-841)

Dear Dr. Patterson:

Your predecessor asked whether the term "employee" in the Texas Hazard Communication Act, chapter 502 of the Health and Safety Code, applies to inmates of the Texas Department of Criminal Justice ("TDCJ"). We conclude that it does not.

Chapter 502 of the Health and Safety Code requires employers to furnish employees with education, training, and information concerning hazardous chemicals at their workplaces. Generally, the statute requires the employer to maintain an updated workplace chemical list and material safety data sheet which are to be available to employees. Health & Safety Code §§ 502.005, .006. It further requires that employers provide their employees who use hazardous materials with yearly education and training. *Id.* § 502.009.

The act defines "employee" as "a person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies" *Id.* § 502.003(10). Your concern is whether TDCJ prisoners are included within the ambit of this definition.

As you point out, this office dealt with a similar question in Attorney General Opinion DM-239. In that opinion, we considered whether college and university students were "employees" for the purpose of the statute, and held that they were not:

It is implicit in the legislature's use of the term "employee" that the legislature meant to refer to someone engaged in an employment relationship, for example, one who works for wages or a salary, as opposed to a "student" who is one who is enrolled for study at an

institution of learning for which he does not receive wages or a salary.

Attorney General Opinion DM-239 (1993) at 2.

We believe that the reasoning of Attorney General Opinion DM-239 applies with equal force to the situation about which you ask. As you note, inmates at TDCJ are not compensated for work which they perform. Such work, TDCJ states in its brief, is generally a condition of their sentences. As a general matter, therefore, prisoners are in the same position with respect to the definition of "employee" as were students. Accordingly, we do not believe that TDCJ prisoners are or should be regarded as "employees" for the purposes of the Hazard Communication Act.

We do not believe that such cases as *Dancer v. City of Houston*, 384 S.W.2d 340 (Tex. 1964), or *Scroggins v. Twin City Fire Insurance Company*, 656 S.W.2d 213 (Tex. App.— El Paso 1983, no writ) require a contrary holding. Such cases hold at most that a prisoner who is put to work and who derives some remuneration for his labor may, as a matter of fact, be an "employee" for the purpose of making claims for on-the-job injuries, whether under the Tort Claims or Worker's Compensation Act. They do not speak to the issue of who is an "employee" for the purposes of the Hazard Communication Act.¹

In our view, the question of who might, in a given factual situation, be an "employee" for the purposes of the Worker's Compensation Act does not imply that such a person is as a matter of law an "employee" for the purposes of the Hazard Communication Act, and we do not believe that a court would necessarily make this implication. Indeed, given that under section 501.024(4) of the Labor Code, "a prisoner or inmate of a prison or correctional institution" is specifically exempted from the definition of "employee" for Worker's Compensation Act purposes, we believe that an extension of the case law in that direction is untenable. Accordingly, we conclude that TDCJ prisoners do not fall within the definition of "employee" in the Hazard Communication Act.² Prisoners, like students, are not employees solely in their capacity as prisoners. See Attorney General Opinion DM-239 (1993) at 3 (student in work-study program might be protected "because of his status as an employee, not because of his status as a registered student").

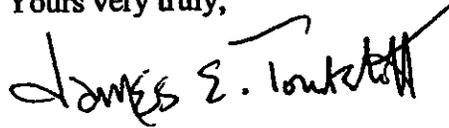
¹We note further that both *Scroggins* and *Dancer* were cases in which plaintiffs sought compensation for personal injuries. That issue is not now before us.

²You do not ask and we do not consider the possible applicability of federal workplace health and safety measures such as, e.g., the Occupational Safety and Health Act of 1970 to TDCJ. 29 U.S.C. § 651 *et seq.*

S U M M A R Y

Prisoners of the Texas Department of Criminal Justice are not "employees" for the purposes of the Texas Hazard Communication Act, Health and Safety Code chapter 502.

Yours very truly,

A handwritten signature in black ink, appearing to read "James E. Tourtelott". The signature is written in a cursive style with a prominent flourish at the end.

James E. Tourtelott
Assistant Attorney General
Opinion Committee