

Texas 
Department
of
Human Services

1D#13704
MT

INTERIM
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Burton F. Raiford

September 19, 1991

RO-211

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The Honorable Dan Morales
Attorney General of Texas
P.O.Box 12548
Austin, Texas 78711

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SEP 26 91

Opinion Committee

Dear General Morales:

Re: Request for Opinion

The Texas Department of Human Services is charged in Human Resources Code Chapter 106 with the duty of securing upon request the criminal histories of prospective employees of certain facilities serving the elderly and disabled.

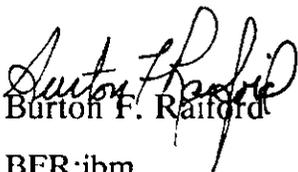
Under the terms of Human Resources Code §106.004(b) a facility may offer a permanent position to a person "licensed under other law" without following procedures outlined in this chapter for a criminal conviction check. However, paragraph (d) of that section provides that a facility may request an investigation of a person employed at a facility, including a person "licensed under other law."

A request was received from a nursing home licensed by the Texas Department of Health for a criminal records check on an employee who is a licensed vocational nurse, which is NOT required under §106.004(b), but allowed under (d). The records check revealed a history of convictions for felony theft within the definition of Human Resources Code §106.003(4) and the facility was notified of the results in compliance with Human Resources Code §106.007.

The facility has asked if they are required to discharge the employee since they were not required to seek the record check initially on an employee licensed under other law. There is apparently no revocation proceeding pending against the employee from the agency which has licensed her to be a vocational nurse.

This is to request your opinion as to whether a facility that chooses to submit the name of an optionally covered employee for a criminal record check is then bound to deny the employee a position based on past criminal convictions of that employee.

Sincerely,


Burton F. Raiford

BFR:jbm