



Ib # 14742
mBS

Texas Department of Health

Robert A. MacLean, M.D.
Acting Commissioner

1100 West 49th Street
Austin, Texas 78756-3199
(512) 458-7111

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RQ-308

FAX#
(512) 458-7477

Jan. 21, 1992

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas 78701

RECEIVED
JAN 24 1992
Opinion Committee

Attn: Opinion Committee

Re: Request for Attorney General Opinion

Dear General Morales:

This is to request an Attorney General's Opinion under authority of the Texas Government Code, Sec. 402.042(b)(2), V.T.C.A. The facts are as follows. Enclosed is an affidavit from Mr. William Scott Garner of Houston, Texas. In his affidavit, paragraph 13, Mr. Garner does "hereby RESCIND AND CANCEL the application and license for marriage, known as 526713, and all implied or direct consent that may be derived therefrom...." On the basis of this affidavit, Mr. Garner has respectfully requested the Department of Health to rescind and cancel the application for marriage license and the license itself. The department has copies of marriage license applications on file but the county clerks keep a record of the licenses themselves.

Applications for, issuance of, and validity of marriage licenses are covered by Chapters 1 and 2 of the Family Code, V.T.C.A., and Chapter 194 of the Health and Safety Code, V.T.C.A. Neither the Family Code nor the Health and Safety Code contain specific language which authorize an individual to rescind and cancel an application and license for marriage by affidavit. Mr. Garner, however, has cited numerous laws and authorities in his affidavit as a basis for rescission. Accordingly, the department is requesting an Attorney General's Opinion on the following question.

Is the Department of Health or county clerk, as appropriate, authorized to rescind and cancel an application for a marriage license and the marriage license itself on the basis of laws and authorities cited in an affidavit which are not included in either the Family Code or the Health and Safety Code?

Your consideration of this request will be appreciated. Please call Dan LaFleur in the department's Office of General Counsel (458-7236) if you have questions or need additional information. Thank you for your attention.

Sincerely yours

Robert A. MacLean, M.D.
Acting Commissioner of Health

Enclosures