



RQ-841

Texas Department of Health

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August 14, 1995

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12648
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Opinion Committee
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Attention: Opinion Committee

Dear General Morales:

The Texas Department of Health (TDH) requests an Attorney General Opinion on whether the term "employee" applies to inmates of the Texas Department of Criminal Justice (TDCJ) and trustees of city and county jails under the Texas Hazard Communication Act (Texas Health and Safety Code, Chapter 502, hereinafter "HCA").

The Occupational Health and Safety Act ("OSHA") defines employee as "a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies." 29 CFR 1910.1200. The Hazard Communication Act is derived from OSHA but leaves the term "employee" undefined.

Some inmates of TDCJ work with or come in contact with hazardous chemicals in state facilities. According to the authorities at the TDCJ, inmates do not receive any type of compensation, either monetary or credit towards their sentence for working. However, the TDH currently considers inmates as employees for purposes of the HCA and conducts a full investigation of an incarceration facility when an inmate complains of exposure to hazardous chemicals. The large number of inmate complaints and the TDH's limited resources make it very difficult for the TDH to investigate every complaint. If the inmates are not considered employees, then they will not be covered by the provisions of the HCA and no investigation by the TDH is required.

One possible conclusion that an inmate is an employee under the HCA is that the Texas legislature intended to broadly apply the HCA in order to protect the citizenry. Therefore, because the HCA is derived from OSHA, an inmate may be classified as an "employee" and entitled to the protections afforded under the HCA.

It should be noted that the case law is sparse on the issue of defining inmates as employees and

addresses the issue in terms of worker's compensation which has a higher standard than the HCA for defining "employee." Dancer v. City of Houston, 384 S.W. 2d 340 (Tex. 1964) held that if an inmate's services are used in a proprietary function then the prisoner has the status of a worker employed by the municipality.

Attorney General Opinion No. DM-239, (July 21, 1993), considered whether students came under the definition of "employee" in the HCA. In concluding that students did not come under the definition of "employee", the Attorney General stated:

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.

Applying the same analysis as to whether inmates are employees could lead to the conclusion that they are not employees since the reasons for their detention have nothing to do with establishing an employment relationship with any entity. However, should inmates be compensated for their labor either monetarily or with credit towards their sentence for their labor then a contractual employment agreement may be implied.

This issue lends itself to differences of opinion and we are requesting that you render a definitive opinion so that we may act with the force of law behind us.

Sincerely,



David R. Smith, M.D.
Commissioner of Health