



# Texas Rehabilitation Commission

" A Human Energy Agency "

RQ-0118-JC

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Opinion Committee

Attorney General John Cornyn  
Office of the Attorney General  
209 West 14th Street, 8th Floor  
Price Daniel Building  
Austin, Texas 78701

Re: Request for Opinion – Selective Service Verification for State Employment Pursuant to TEX. GOV'T CODE § 651.005

Dear General Cornyn:

The Texas Rehabilitation Commission requests your opinion on whether TEX. GOV'T CODE § 651.005's requirement of proof of selective service registration or exemption, prior to hire by state agencies, applies only to males who are 18-25 years of age. According to § 651.005, after September 1, 1999, state agencies are prohibited from hiring any person as an employee "if the person is of the age and gender that would require a person . . . to register with the selective service system under federal law," unless the person has proof of registration or exemption from registration.

Current federal law requires and permits only males who are 18-25 years of age to register with the selective service system. 50 U.S.C. App. § 453. The selective service system registration requirement is applicable only to males born on or after January 1, 1960. Presidential Proclamation No. 4771 (July 2, 1980), 45 F.R. 45247.

The language of § 651.005 is not clear as to whether state agencies must receive proof of selective service compliance from all male hires over the age of 18 years who were born on or after January 1, 1960 or whether proof is required only for those males who are 18-25 years of age. In enacting § 651.005 the legislature used present tense language: "if the person is of the age and gender that would require a person to register," instead of language that would clearly apply both to persons who are currently required and eligible to register and to those who were required to register, regardless of their current age. (Emphasis added). Section 651.005, therefore, appears to apply only to males who are currently 18-25 years of age, since they are the only ones required and allowed by federal law "to register" with the selective service system.

The apparent ambiguity in § 651.005 is further highlighted by its federal equivalent, 5 U.S.C. § 3328 of the Defense Authorization Act. Section 3328 prohibits federal employment of any male born after December 31, 1959, and who is not registered or is not exempt from registration with the selective service system. However, unlike the state provision, the federal provision specifically uses both past and present tense





language to encompass any male "who is or was required to register." 5 U.S.C. § 3328 (emphasis added).

If § 651.005 is interpreted like the federal law to require proof of selective service compliance from all males who are or who were required to register, state agencies would be prohibited from hiring any male over the age of 26 years and born on or after January 1, 1960, who failed to register with the selective service system and who did not have an exemption from registration.

As additional background, a related statutory provision requiring selective service registration, TEX. EDUC. CODE § 51.9095, which requires compliance with selective service registration for state financial educational assistance, contains language which specifically states that the selective service registration requirement does not apply to individuals "older than the maximum age at which an individual is required to be registered with the selective service system under federal law." TEX. EDUC. CODE § 51.9095(c). Thus, the legislature has used language that clearly encompasses all males who are required to be registered with the selective service system when such is the intended purpose. In the case of § 651.005, this clear statutory language was not used.

Because of this ambiguity, TRC is requesting your opinion on whether TEX. GOV'T CODE § 651.005's selective service registration or exemption requirement applies only to males who are 18-25 years of age.

Sincerely,

  
Vernon M. Arrell  
Commissioner

VMA:BML

