



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Hon. Adam R. Johnson, Executive Director
State Department of Public Welfare
Austin, Texas

Dear Sir:

Opinion No. O-1409
Re: Deposit of Federal funds in
State Treasury

This will acknowledge receipt of your letter of September 8, 1939.

You advise that certain funds on deposit in the Austin National Bank, representing the residue of Federal funds turned over to the Texas Relief Commission in accordance with Federal rules and regulations, on January 1, 1936, to be expended by the State Commission in its discretion in continuing the General Relief program in this State, have been transferred to the State Department of Public Welfare pursuant to the provisions of Senate Bill No. 36, 46th Legislature, Regular Session.

Additional facts given by you are as follows:

"Expenditures have been made out of this fund in strict accordance with Federal instructions that were given the Texas Relief Commission at the time the monies were transferred to it, and all accounting for disbursements from and the handling of monies in the fund has been made to the Federal Government, inasmuch as provisions of Federal laws and rules and regulations alone controlled its administration, there being no State laws governing expenditures out of this fund. The Federal rules and regulations have required that this money be kept in National Banks, subject to withdrawal by the Texas Relief Commission, and, therefore, none of it has been deposited in the Treasury of the State of Texas. The entire administration of this fund has always been under Federal regulation and control."

You desire the opinion of this department upon the following questions:

"1. Under the laws of this State should the Department of Public Welfare deliver to the State Treasury for deposit in the State Treasury monies on deposit in the Austin National Bank, Austin, Texas, the custody and control of which monies has now been transferred to the State Department of Public Welfare by the Texas Relief Commission, or should same be left on deposit in the Austin National Bank subject to withdrawal by the Department under the powers delegated to it by law?

"2. If, in answering the above question, you state that the monies in the Austin National Bank, Austin, Texas, referred to in that question should be transferred to the State Treasury for deposit, is the Department of Public Welfare empowered to authorize expenditure of same in its discretion in accordance with Federal rules and regulations under which said monies were allocated to the State of Texas?"

By the provisions of Senate Bill No. 36, 46th Legislature, Regular Session, the State Department of Public Welfare is directed and required to cooperate with the Federal Government, and any agency thereof, in any reasonable manner which may be necessary to qualify for Federal aid for assistance to persons who are entitled to assistance under the provisions of the Social Security Act enacted by the 74th Congress and approved August 14, 1935.

Section 11a of the Act provides as follows:

"The State Treasurer is hereby designated as the custodian of any and all money which may be received by the State of Texas (which the State Department of Public Welfare is authorized to administer), from any appropriations made by the Congress of the United States for the purpose of cooperating with the several states in the enforcement and administration of the general

provisions of the Federal 'Social Security Act,' and all money received from any other source; and the State Treasurer is hereby authorized to receive such money, pay it into the proper fund or the proper account of the General Fund of the State Treasury, provide for the proper custody thereof and to make disbursements therefrom upon the order of the State Department and upon warrant of the State Comptroller of Public Accounts."

Under the state of facts outlined by you above, these funds cannot and should not be deposited in the State Treasury, but should remain on deposit in the Austin National Bank, Austin, Texas, in compliance with the rules and regulations of the Federal government. The fund not having been released to the State, but having remained under the regulation and control of the Federal authorities, it does not represent such State monies as may be, by the Legislature, required to be deposited in the State Treasury.

Even assuming, however, that the funds there have acquired the status of State monies, nevertheless, the State, having received such monies by grant, to which grant was attached such conditions, among them being that the money be kept in national banks subject to withdrawal by the Texas Relief Commission, the grant may not be accepted and the condition rejected by the State.

You are therefore advised that the funds to which you refer should be left on deposit in the Austin National Bank subject to withdrawal by your Department according to the rules and regulations of the Federal government.

The answer to your first question renders it unnecessary to answer your second.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed)
R. W. Fairchild
Assistant

RWF:pbp

APPROVED SEP 16, 1939

(Signed) Gerald C. Mann
Attorney General of Texas

Approved
Opinion Committee
B. E.W.C. Chairman