



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

**GERALD C. MANN  
ATTORNEY GENERAL**

Honorable Charles A. Tosch  
County Auditor  
Dallas County  
Dallas, Texas

Dear Sir:

Opinion No. O-2578  
Re: Constitutionality of  
Section 25 of the Wel-  
fare Act of 1939.

We have your letter of August 6, which reads  
as follows:

"The Welfare Act of 1939, Senate Bill  
36, Chapter I, Acts of the Forty-sixth Legis-  
lature contains, among other things, a pro-  
vision that is of vital importance to the  
financial interests of cities and counties  
in Texas.

"This provision contained in Section 25  
is as follows:

"Assistance shall be granted under  
the provisions of this Act to all  
persons or families who are in de-  
pendent and needy circumstances,  
and who are ineligible for, or not  
currently receiving assistance in  
other categories specified in this  
Act."

"I will thank you for your opinion as to  
the constitutionality of this law, especially  
as to Section 25 of the above mentioned law."

The apparent intention of Section 25, above quoted,  
is to authorize the State Department of Public Welfare to  
grant aid to all dependent and needy persons and families,  
irrespective of whether they qualify under the specific

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categories enumerated by the Welfare Act, i.e., old age assistance, needy blind, dependent and destitute children, and aid administered by Texas Relief Commission. Whether the Legislature is empowered to grant aid to all dependent and needy persons raises a serious constitutional question.

Article 3, Section 51, of the Constitution of Texas, provides in part:

"The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever,  
\* \* \*."

This section then continues, to make provision (by express exception to the first sentence above quoted) for payment of Confederate pensions.

The following subsections of Section 51 of Article 3, have carved additional express exceptions out of the prohibition of the first sentence. Section 51a authorized the issuance of \$20,000,000 of bonds for relief as administered by the Texas Relief Commission. Section 51b authorizes the Legislature to provide old age assistance with certain limitations to citizens over 65 years of age. Section 51c authorizes aid to the needy blind. Section 51d authorizes aid to destitute children.

By the very fact that the Constitution, as amended, provides expressly for State aid to Confederate veterans, the aged, the needy blind and destitute children, it follows by the rule of "expressio unius, exclusio alterius" that aid to all others is prohibited by Article 3, Section 51. The Supreme Court of Texas has repeatedly announced that this constitutional provision forbids the use of State money for any but the purposes authorized by the Constitution.

Chief Justice Phillips, speaking of Section 51 of Article 3, in *Bezar County v. Linden*, 110 Tex. 339, before the adoption of the amendments 51a, 51b, 51c and 51d, declared:

"This section clearly recognizes only soldiers and sailors of the Confederacy, their wives and widows, and women who aided

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in the Confederacy, as having any claim upon the bounty of the State. Its evident purpose is to deny to the Legislature any power to grant or to authorize the grant of public money to all others, absolutely.

"The giving away of public money, its application to other than strictly governmental purposes, is what the provision is intended to guard against. The prohibition is a positive and absolute one except as to a distinctive class to whom the State is under a sacred obligation." (Emphasis ours)

In Road District No. 4, Shelby County v. Alford, 123 Tex. 77, 68 S. W. (2d) 164, Judge Critz, of the Commission of Appeals, reaffirmed the inviolability of Article 3, Section 51 in the following language:

"It is settled law of this State that the above quoted constitutional provision is intended to guard against and prohibit the granting, or giving away, of public money, except for strictly governmental purposes. The prohibition is an absolute one, except as to the class exempted therefrom, and operates to prohibit the Legislature from making gratuitous donations to all kinds of corporations, private or public, municipal or political."

In this connection, it is well also to consider Article 16, Section 6, of the Texas Constitution, which provides in part:

"No appropriation for private or individual purpose shall be made."

It can hardly be doubted, in the light of the foregoing authorities that Section 25 of the Public Welfare Act of 1939 contravenes both the letter and spirit of Article 3, Section 51 of the Texas Constitution, in that it seeks to authorize the payment of State money to private persons other than those contemplated by the several amendments to the section.

There is yet another compelling reason which has led us to this conclusion. The attempted largess and benevolence of the Legislature expressed in Section 25 may not be

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sustained on the theory that the State would thereby be discharging its inherent obligation to care for paupers. The performance of this duty has been delegated to the several counties by the Constitution in Article 16, Section 8:

"Each county in the State may provide, in such manner as may be prescribed by law, a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants."

This express provision in the Constitution, prescribing the manner in which the indigent of this State shall be cared for, precludes, we believe, resort to any other method short of a constitutional amendment. This rule of construction was announced by Judge Davidson in *Ex Parte Massey*, 49 Cr. R. 60, 92 S. W. 1086:

"It is a well-known rule, sanctioned by all legal authority, that where the Constitution provides how a thing may or shall be done, such specification is a prohibition against its being done in any other manner. This is but the application of the familiar rule that the expression of one thing is the exclusion of any other, and therefore is decisive of legislative authority."

While decisions of other States are not controlling in construing the Texas Constitution, we believe the following language of the Supreme Court of Pennsylvania in *Busser v. Snyder*, 128 Atl. 80, at 86, is applicable to the question before us here:

"\* \* \* a direct appropriation from the State treasury to any person or class of persons cannot be sustained on the theory that it is a discharge of the inherent obligation of the State to take care of its paupers."

The conclusion we have reached finds further support in the Welfare Act itself. Section 43 thereof reads in part:

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"No provision of this Act is intended to release the counties and municipalities in this State from the specific responsibility which is currently borne by those counties and municipalities in support of public welfare, child welfare, and relief services."

It is our considered opinion that Section 25 of the Welfare Act of 1939 is invalid as being in violation of Article 3, Section 51 of the Texas Constitution. Section 25 is readily severable from the remainder of the Act without impairing or affecting the other provisions or defeating the general purpose of the entire Act. Section 41 expressly provides against partial invalidity affecting the remaining portions of the Act. Though we have not attempted to consider the Act in minute detail, we regard it as valid with the exception of Section 25, in the absence of having our attention called to any other particular provision.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 25, 1940

*Walter R. Koch*  
 ASSISTANT  
 ATTORNEY GENERAL

By *Walter R. Koch*  
 Walter R. Koch  
 Assistant

WRK:RS

