OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Mrs. Violet S. Greenhill, Chief
Division of Child Welfare
State Department of Public Welfare
Austin, Texas

Dear Madam:

Opinion No. O-2739-A
RE: Does Opinion No. O-2739 conflict with the opinion dated February 21, 1938?

Your recent request for an opinion of this department on the above stated question has been received.

We quote from your letter as follows:

"Your opinion written by Ardell Williams, Assistant, dated October 24, 1940, addressed to Honorable Ernest Guinn, County Attorney, El Paso, Texas, raised a question in our minds. We were uncertain whether the language therein expressed conflicted with an opinion given on February 21, 1938 by James N. Neff, Assistant Attorney General. We, therefore, asked Judge T.E. Darcy, Supervisor, Correspondence and Complaints, Department of Public Welfare, to interpret these opinions in an attempt to reconcile any difference which might be between them.

"In a letter dated October 31, 1940, Judge Darcy points out that in his opinion there is no conflict in these two opinions. Will you kindly read the attached copy of Judge Darcy's letter and advise us whether or not his analysis is correct? If there is anything in his letter with which you do not agree, we would like to have a specific statement of the points in which you differ."

The Honorable Ernest Guinn, County Attorney, El Paso, Texas, has presented a letter in connection with the above men-

tioned inquiry which reads as follows:

"Please refer to your Opinion No. O-2739 and related opinions.

"In view of your Opinion No. O-2739, and particularly the last paragraph thereof, reading as follows:

"'We have been unable to find any Statute that expressly or by implication authorizes the Commissioners' Court to create and establish the office (Child Welfare Office) above mentioned and appropriate and expend funds for the maintenance of such office.'

"I advised the Commissioners' Court that they were without authority to maintain the Child Welfare Office in the County, which had been theretofore maintained by Federal funds, under State supervision. It was my opinion that this Opinion correctly stated the law on the subject.

"A member of the Division of Child Welfare of the State Department of Public Welfare, is in El Paso at this time, and I understand that they have discussed the matter further with members of your staff, and they have requested that I re-submit the question to you as follows:

"This is therefore, to request an opinion from you on the following facts:

"For three years past, the State Department of Public Welfare has maintained, in El Paso County, a district representative, operating under the Child Welfare Act, (Article 695-c, Revised Civil Statutes.) All of the salary of this worker having been paid from State and Federal funds.

"El Paso County has a Juvenile Board and appoints probation officers, who function in accordance with Articles 5139-5142.

"The County heretofore appointed a County Child Welfare Board, under the provisions of Section 4,

Article 695-a, which reads:

> "'Commissioners' court of any county may appoint in said county seven persons, residents therein, who shall serve without compensation and hold office during the pleasure of the commissioners' court, who shall constitute a Child Welfare Board for the county, which Child Welfare Board shall select its own chairman. The Child Welfare Board shall perform such duties as may be required of it by the said commissioners' court and Board of Control, in furtherance of the purpose of this act. County commissioners' court of any county may remove any member of such county Welfare Board for just cause.'

"Paragraph 5 of Article 695-a, provides that the Board of Control, through said County Child Welfare Board, should work in conjunction with the Commissioners' Court and Juvenile Board, and that the Board of Control was authorized to use and allot any funds available for the accomplishment of the purpose.

"Under Section 42 of Article 695-a, it is provided that County Child Welfare Boards established under Article 695-a could be continued.

"The State Department of Public Welfare has requested the County to participate in the operation of a County Child Welfare Office in El Paso County. The office is to consist of a Child Welfare worker and a stenographer. The County has been requested to appropriate $1,200.00 to apply towards the payment of the salaries of the Child Welfare worker and the stenographer and traveling expenses of the Child Welfare worker, or to be applied in such other manner as the County Child Welfare Board designates. The balance of the salaries and office expenses are to be borne by Federal aid, distributed under State supervision, through the State Department of Public Welfare.

The County Child Welfare Board, created under Section 4, Article 695-a, is to employ the worker and stenographer, subject to the approval of the State Department of Public Welfare. I am advised that the duties of this Child Welfare worker will consist of the following:

> "'General services to dependent, neglected children or special demonstrations in certain fields, such as prevention of delinquency.'

and,

> "'To safe-guard homeless, dependent and neglected children, and children who are in danger of becoming delinquent.'

and,

> "'Providing case work services for children; with the County Welfare Board to gather information on child welfare; to work closely with County Welfare Board's interpreting the need of children, stimulating interest in meeting these needs through organization of Child Welfare units; to give consultation services on problems affecting children; to make studies especially population analyses and follow up of children in institutions; to study the needs of individual children, particularly those referred for care by the public department and find ways of meeting those needs that do not involve the expenditure of public or private local funds; to interpret the needs of children and ways of meeting them by close working relationship with County officials, private agencies caring for children, local groups and interested individuals; to co-operate with existing agencies both public and private where

> Child Welfare problems are involved; to give case work services to those agencies, both State and local, to locate and study foster homes and to place and supervise children when the situation demands; services are available to all children in need within the county.'

"The County has agreed to appropriate $1,200.00 for this purpose, if it is legal. I have advised the County Commissioners' Court that in my opinion such an expenditure was unauthorized in law and would constitute an illegal expenditure. It is my further opinion that Opinion No. O-2739, reaches the same conclusion.

"Question No. 1. Can the County appropriate $1,200.00 for the purpose outlined above?

"Question No. 2. Is there any way the County can pay this money to the County Child Welfare Board to accomplish such purpose?

"In support of my contention that the appropriation is illegal, I refer you to my letter of September 11, 1940, and then call these additional facts to your attention.

"Subdivision 'd' of Section 9, Article 695-c, reads as follows:

> "'d. Provided that no provision of this act shall in any manner interfere with the powers and functiions of ....the juvenile boards of any of the counties authorized by Title 82.'

"Articles 5139-5142 set up specific offices and provide funds for caring for dependent, neglected and delinquent children within counties falling within such classification. A salary of $1,500.00 a year is added to the salary of each district judge for serving on the Juvenile Board. This additional payment was held valid in the case of <u>Jones vs. Alexander</u>, 59 S.W. (2nd) 1080. The Court in that case states:

"'The language of this act (Articles 5139-5142) shows that it was the outstanding purpose of the Legislature to place the care and control of minors in such county or under the jurisdiction of any of its courts, under a more direct supervision of the district judges of those counties.'

and further,

"'The Legislature evidently thought that by placing the minors under more direct supervision of the district judges of those counties, it would be helpful to the minors and beneficial to the public. It is quite plain that if the powers conferred on the district judges over minors are properly exercised, it will have a tendency to lessen crime and duties of the court. Considering our form of government, a more direct, effective and responsible method could not be designed.'

"Article 5142 sets up in detail the number of juvenile officers, whose duty it is to make investigations for the Juvenile Board, and to perform all duties necessary relating to the welfare of children under the jurisdiction of the Board. The Article also provides for appointment of a school attendance officer, to be paid jointly by the county and the school authorities, for school work. The Act further provides:

"'Salary of paid juvenile officers and their assistants shall be fixed by the commissioners' court not to exceed the sums herein mentioned and any bill for expenses, not exceeding the sums herein provided for, shall be certified by the county judge as being necessary in the performance of the duties of the juvenile officer.'

"This Act provides for the appointment of the officers by the county judge, subject to the approval of the County Juvenile Board.

"From the Statutes which come to our attention, which we have referred to, we find no authority for the appropriation of any funds for the worker to perform the duties which the Child Welfare worker is to perform, except under Article 5142, relating to the appointment of probation officers and assistants. We find no authority for the employment of workers by the County Child Welfare Board or the appropriation of funds for Child Welfare work through such Board, since Articles 5139-5142, in my opinion, specifically relate to the work which the Child Welfare worker and the Child Welfare office is to perform, and a specific appropriation and limitation of funds, as provided for in those Articles, is exclusive. A different question would exist, of course, in a county where there was not a paid Juvenile board and paid probation officers, since an implied power to appropriate funds might exist, but where a specific appropriation has been made, implied power cannot, in my opinion, arise.

"I understand that the County Child Welfare Board is very anxious to have an opinion on this matter at an early date, and I therefore request your early consideration of the matter.

"The Commissioners' Court has requested me to ask you to submit this question to a conference opinion, and I would appreciate it very much if this could be done."

With reference to the opinion above mentioned, written February 21, 1938, the following was presented to this department for an opinion:

"The Commissioners' Court some week or ten days ago passed the following order:

"By motion duly made and seconded and carried, the court agreed to co-operate in the establishment of a Child Welfare Unit for the City of Tyler and Smith County and hereby appropriates $1,200.00 for that purpose for one year.

"On a subsequent date they met and agreed on a Joint Committee with the City to have charge of

this work and receive and disburse the monies appropriated by the City and County.

"I am now presented with an order from the County Judge as Chairman of the Commissioners' Court for $100.00 to be paid to a member of this Welfare Commission who has been designated as Treasurer. No member of this Committee is a county officer.

"Please give me a ruling as to whether or not the Commissioners' Court has such authority."

With reference to the above the opinion holds:

"It is our opinion that the Commissioners' Court is authorized to make the appropriation for the purpose set out in your letter. Even though no express authority existed for the Commissioners' Court to appropriate money for a cause of this character, we believe, in view of the use to be made of such appropriation, such court has the implied authority to expend money for the purposes set out in your letter and by the terms of Article 695b."

The letter of the county attorney of El Paso County above quoted presents the same identical questions as passed upon in our original Opinion No. O-2739, addressed to the County Attorney of El Paso County. We have carefully reconsidered our Opinion No. O-2739 and are constrained to adhere to the conclusion stated therein. That opinion specifically answers the questions propounded in the letter of the county attorney mentioned above.

The Division of Child Welfare of the State Department of Public Welfare raises the question of whether the commissioners' court is authorized under the holding of the opinion of February 21, 1938, to make the appropriation and expenditures set forth in the letter of the county attorney, as above quoted.

After considering the above mentioned opinion written February 21, 1938, and our original Opinion No. O-2739, and the

authorities cited therein, we are of the opinion that the commissioners' court is not legally authorized to make the appropriation and expenditures heretofore mentioned and the opinion bearing date of February 21, 1938, is hereby expressly overruled insofar as it conflicts with Opinion No. 002739.

Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By Ardell Williams

Ardell Williams
Assistant

APPROVED DEC 20, 1940

Grover Sellers

FIRST ASSISTANT
ATTORNEY GENERAL

AW:AW

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN