



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Thomas Wheat  
County Attorney  
Liberty County  
Liberty, Texas

Dear Sir:

Opinion No. 0-3075

Re: Does the commissioners' court have authority to appropriate county funds for the payment of a part or all of the salary of a stenographer, assistant or secretary of the investigator for the Department of Public Welfare?

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

We quote from your letter as follows:

"The question has arisen before the Commissioners' Court of Liberty County, as to whether or not they are authorized to contribute or pay the salary or a part thereof for a stenographer, assistant or secretary to the investigator for the department of Public Welfare, formerly known as the 'Old Age Assistance Commission', it being shown that this assistant or clerical help is needed to talk to the old people when they come into the office, when the investigator is out in the County making his investigation.

"I have advised the investigator for the department of Public Welfare, Mr. Howard S. Bailey, of Liberty, Texas, that the County has the authority to appropriate funds to employ clerical help for him, and I have also advised the Commissioners' Court that they have this authority, however, in order to be safe upon the question, I would like to have

a ruling from you and I know that you and your well learned and well versed assistants will be able to render me an opinion that will settle the question, as to whether or not the County is authorized to appropriate this fund.

"As stated above, it is my opinion that they are authorized to appropriate funds for the payment of a salary or a part thereof for an assistant to the investigator of public welfare, and I base my opinion upon the fact that subdivision 11 of Article 2351, providing for the powers and duties of the Commissioners' Court provides that each Commissioners' Court shall 'provide for the support of paupers and such idiots and lunatics, etc.' and Section 43 of Article 695-C known as the 'Public Welfare Act of 1939' (46th Legislature, Page 544, Volume 2, provides 'No provision of this act is intended to release the counties and municipalities in this State from the specified responsibility which is currently borne by those counties and municipalities in support of public welfare, child welfare, and relief services. Such funds which may hereinafter be appropriated by the Counties and municipalities for those services (to-wit, for the support of paupers, under subdivision 11 of Article 2351 by the Commissioners' Court - as addition) may be administered through the County or District offices of the State department, and if so administered, shall be devoted exclusively to the services in the county or municipality making such appropriation.'

"As such you see that the acts of the Public Welfare Act of 1939 in Section 43 thereof expressly provides, that the money appropriated by the Commissioners' Court for the support of public relief agencies of the County, may appropriate under subdivision 11 of Article 2351, by the Commissioners' Court, and may be administered through the county or district offices of the State Department, of public welfare to-wit, the County Investigator, who in this instance, is Mr. Howard S. Bailey. If an assistant to provide office help is needed by

him and if the District offices authorize him to employ clerical help and have so authorized him to do so, the County would be authorized to pay her salary under Subdivision 43 of Article 695 C known as the 'Act of Public Welfare.' I say this notwithstanding your opinion No. 0-120 rendered on January 27th, 1939, to the Honorable Leo Presnell, County Attorney of Upshur County, Gilmer, Texas, wherein you ruled that the Commissioners' Court did not have the authority to pay the salary of an assistant or Clerk to the County Investigator of the Texas Old Age Assistance Commission, (because it did not constitute County business (in view of Article 6232-8-B) I say this because your opinion was based upon a provision under the law providing for an old age assistance Commission and this law providing for old age assistance has been superseded by the law providing for the administering of old age assistance under the Department of public welfare.

"In view of this, I would like to have an opinion from you under this question, and I further refer you to subdivision 'e', Section 5 of Article 695-C above referred to, which says 'The State Department shall be charged with the administration of the welfare activities of the State as hereinafter provided. . . . Assist other departments, agencies, and institutions of the local, State and Federal Governments, when so requested and cooperate with such agencies when expedient, in performing services in conformity with the purposes of this Act.' And 'g' provided - 'Establish and provide such method of local administration as is deemed advisable and provide such personnel as may be found necessary for carrying out in an economical way the administration of this Act;. . .' AAs such under subdivision 'e' of Section 5 of the Act if the department see fit to allow Mr. Bailey to employ clerical help as he has done under their approval, then the County is authorized to pay this clerical help's salary under Section 43 of this Act, where as above mentioned herein it is provided that the funds of the County may be administered through the County or District

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offices, and if the County or District Offices see fit to administer these funds by paying them to clerical help, then I think this would be lawful.

"I also refer you to your Opinion No. O-2217, wherein you say:

"'When Commissioners' Courts were burdened with the duty of providing support for such persons, they were given the sound discretion of determining those whom they were required to provide for under the terms of the Statute. By necessary implication they acquired the power to employ such help as might be necessary to properly sift out those entitled to such relief and to investigate and ascertain the extent and amount of the need.'

"Please give me an immediate reply as per this request."

We have carefully considered your letter and the statutes mentioned therein, but do not agree with your conclusion.

The State Board of Public Welfare is charged with the administration of the welfare activities of the State as is mentioned in Section 5 of Article 695-C, Vernon's Annotated Civil Statutes. After carefully considering the statute as a whole, we have been unable to find any provision authorizing the Commissioners' Court to make appropriations and expenditures for the purpose mentioned in your letter. Paragraph (g) of Section 5 of Article 695-B, providing that the State Board of Public Welfare shall establish and provide such method of local administration as is deemed advisable, and providing for such personnel as may be found necessary for carrying out in an economical way the administration of the Act, does not authorize the Commissioners' Court to make an appropriation to pay the salaries of such personnel engaged in the local administration of the Act. The same can be said with reference to Section 43 of Article 695-C.

We do not believe that subdivision 11 of Article 2351, Vernon's Annotated Civil Statutes, can be construed as authorizing the Commissioners' Court to make an appropriation and expend

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the same for the purpose above mentioned. Neither can our Opinion No. O-2217, mentioned in your letter, be construed as authorizing such an appropriation and expenditure.

(b) We have been unable to find any statute that expressly or by implication authorizes a Commissioners' Court to appropriate and expend funds for the payment of a part or all of the salary of a stenographer, assistant or secretary of the investigator for the Department of Public Welfare. Therefore, the question as above stated is respectfully answered in the negative.

We are enclosing herewith a copy of our Opinion No. O-2739A, touching the subject under consideration and a copy of our Opinion No. O-120, mentioned in your inquiry.

Trusting that we have fully answered your inquiry, we are

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By Ardell Williams (S)  
Assistant

AW:RS:bg

APPROVED FEB. 12, 1941  
Gerald C. Mann (S)  
ATTORNEY GENERAL OF TEXAS

APPROV D  
Opinion Committee  
By BWB chairman