



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

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ATTORNEY GENERAL

Honorable J. S. Murchison
Executive Director
State Department of Public Welfare
Austin, Texas

0-3136

Dear Sir:

Opinion No. O-5136
Re: Authority of Committee
appointed under H. S. R.
No. 71 to inspect the
records of the Old Age
Assistance Division of
the Department of Public
Welfare.

Your letter of February 7, 1941, reveals that House Simple Resolution No. 71, Regular Session, 47th Legislature, provides for an investigation into the activities and practices of the Old Age Assistance Division of the Department of Public Welfare and authorizes the Speaker of the House of Representatives to appoint a Committee to conduct the investigation. A portion of this House Resolution is set out in your letter as follows:

* * * forthwith proceed with a complete and full investigation of the administration of old age assistance in this State and particularly said committee shall inquire into the complaints hereinabove set forth, to-wit, the conduct by which officials, investigators and supervisors of the Pension Division are alleged to have been abusing and mistreating old age assistance applicants and discriminating between applicants; that said committee be empowered to subpoena witnesses, procure written and factual evidence, command the bringing before it of such records of the Old Age Assistance Commission as it may deem fit and proper; and that said committee, in addition to con-

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ducting said inquiry, shall be directed to report back to the House of Representatives, by not later than February twenty-first, proper legislative action by which the administration of old age assistance in this State can be effectively handled in such manner as to deserve and receive public approval rather than public condemnation as is now the case."

The Chairman of the Investigating Committee, appointed under the terms of this Resolution, has requested you to instruct all field workers, area supervisors, and others having charge of the confidential records and case files of the various recipients of, or applicants for, old age assistance to make these records available to the Committee and you have requested our opinion as to "whether or not this request is compatible with the provisions of Section 31 of Senate Bill No. 36, 46th Legislature, Regular Session, and Attorney General's Opinion No. C-2432."

Section 31, Senate Bill No. 36, 46th Legislature, Regular Session, in part, provides:

"All records concerning any applicant or recipient contemplated in this Act shall be confidential, and shall be open to inspection only to persons duly authorized by the State, or the United States, to make such inspection in connection with their official duties; * * *"

In the case of Ex parte Gray, 64 Tex. Crim. Rep. 311, 144 S. W. 531, at page 569, the pertinent facts show that the Senate adopted a Single Resolution providing for the election of a Committee to investigate various matters regarding voting, in connection with the prohibition amendment to the Constitution, and the election laws of the State and to report generally upon such legislation as may be necessary to correct the evils, if any, in relation to the matters investigated. Gray was sum-

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ioned and appeared before the Committee but refused to answer certain questions propounded to him. The witness after being arrested under a committment issued by the Lieutenant Governor sued out a writ of habeas corpus which was granted by a member of the Court of Criminal Appeals and the case was set down for hearing. It was contended by the Relator that one branch of the Legislature had no authority to appoint a committee and authorize it to conduct an investigation for the purpose of obtaining information and making recommendations and that if such power existed, it existed in the Legislature as a whole and would take the concurrent action of both Houses, together with the approval of the Governor, to give life and validity to an investigating committee. In holding that either House may appoint committees to conduct investigations, the Court, through Judge Farper, said:

*** Section 37, art. 3, of the Constitution provides that 'no bill shall be considered unless it has first been referred to a committee,' etc. Does this mean a committee appointed by authority of both houses? Since the organization of our government each branch of the Legislature has assumed authority to appoint its own committees, without the concurring action of the other branch, and our Supreme Court in the case of Day Land & Cattle Company, v. State, 68 Tex. 544, 4 S. W. 873, holds: 'The answer of the defendant alleged that the act of February 25, 1879, was never legally passed, in that the bill was not referred to a committee of each house before it was acted upon. The answer shows that the bill was referred to a committee by the Senate, who reported upon it favorably before the Senate acted upon it, but that it was not referred to a committee by the House of Representatives before that body acted upon it. The Constitution provides that 'no bill shall be considered unless it has been first referred to a committee and reported thereon.' Const. art. 3, section 7. This does not in terms require a bill to be referred to a committee by each house before it can become a law. The requirement is that a bill shall be 'referred to a committee and reported thereon' before it shall be considered. This, from the averments of the answer, was done, and we can-

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not, under the wording of the Constitution, say that more than this was necessary.'

"Thus it is seen that, when a bill is referred to a committee created by the Senate alone, it has been held a sufficient compliance with section 37 of article 3, thus recognizing the right of each branch of the Legislature to appoint its own committees; and section 11 of article 3 specifically provides that 'each house may determine the rules of its own proceedings,' and if the Senate in the exercise of its discretion deem it essential to appoint a committee to gather information and report back recommendations in regard to the enactment of laws, we think it had the power and authority. This has been the construction of our Constitution by all of our Legislatures in the past, the construction that the Congress of the United States has given to the power possessed by each branch thereof, and the construction of the powers of each branch of the Legislature in almost every state in the Union, in the absence of constitutional inhibition; and we hold that the Senate had the authority and power to create the committee and authorize it to gather information and make recommendations on all subjects upon which the Legislature would have the right to enact laws. * * *" (Underscoring ours)

The facts in *Terrell vs. King*, 118 Tex. 237, 14 S. W. (2d) 786, show that a tax survey committee was created by a Joint Resolution by the 40th Legislature to collect information necessary to the revision of the tax laws of the State. The Resolution provided that the members of the Committee were to be paid Ten (\$10.00) Dollars per day for each day they served. Appellee, as a citizen and taxpayer sought to enjoin the Comptroller from issuing warrants to the committee members because, as he contended, the Committee was unconstitutional and void. In speaking of the right of each House to appoint investigating committees, the court said:

*** In declaring, in section 11 of article 3, that 'each house may determine the rules of its own proceedings,' the Constitution plainly delegates to each house the choice of methods for the most advantageous use of its functions in the exercise of the state's 'legislative power,' which Mr. Cooley defines as 'authority under the Constitution to make laws, and to alter and repeal them.' Cooley's Constitutional Limitations (8th Ed.) p. 163. Having such choice of methods, each house is fully authorized to appoint committees to make investigations and conduct inquiries and gather information with respect to the operation of subsisting laws and the need for their improvement, alteration or repeal. McCulloch v. Maryland, 4 Wheat. 409, 4 L. Ed. 579. Not only does the Constitution, in the grant of the rule-making power, authorize either house to name such committees as it may deem necessary or proper for purposes of investigation and inquiry, when looking to the discharge of any legitimate function or duty of such house, but the Constitution goes further and makes consideration by a committee a condition precedent to the enactment of any law. Section 37, article 3.

*** The authority of each house to use legislative committees of inquiry and investigation is affirmed in Cooley's Constitutional Limitations (8th Ed.) at page 275, where the author says:

"Each house must also be allowed to proceed in its own way in the collection of such information as may seem important to a proper discharge of its functions and whenever it is deemed desirable that witnesses should be examined, the power and authority to do so is very properly referred to a committee, with any powers short of final legislative or judicial action as may seem necessary or expedient in the particular case."

*** Our conclusion that the Legislature or either house possesses authority to order con-

committee investigations and inquiries, in order to get information requisite to the right use of legislative power, is but an application of the principle often recognized by this court that a constitutional grant of power includes authority to do all things necessary to accomplish the object of the grant. Smisson v. State, 71 Tex. 235, 9 S. W. 112; Texas Cent. R. Co. v. Rowan, 97 Tex. 422, 79 S. W. 295; Terrell v. Sparks, 104 Tex. 197, 135 S. W. 519. * * * (Underlining ours)

The above cited authorities clearly establish the power and authority of the House of Representatives to appoint committees to conduct investigations and inquiries into matters with respect to which legislation is contemplated. In making its investigation, conforming to the provisions of House Simple Resolution No. 71, such committee will be clearly acting with "due authority of the State." The power resting in the House of Representatives has, in our opinion, been legitimately exercised through the medium of House Simple Resolution No. 71. Accordingly, it is our opinion that the committee so appointed is, within the meaning of Section 31, Senate Bill No. 36, 46th Legislature, "duly authorized by the State * * * to make" an inspection of the records mentioned in your opinion request.

The above conclusion is not inconsistent or incompatible with Attorney General Opinion No. O-2432; in Opinion No. O-2432, the question under consideration was whether under Section 31 of Senate Bill No. 36, 46th Legislature, an employee of the Department of Public Welfare could be compelled to disclose in court, in cases involving private parties, any of the facts and information contained in case records of applicants for, or recipients of, old age assistance. The opinion is clearly limited to the question presented therein and does not purport to answer a question regarding the right of State officers to inspect old age assistance records in connection with their official duties.

Yours very truly

APPROVED FEB 13, 1941

ATTORNEY GENERAL OF TEXAS

Gerald C. Mason

ATTORNEY GENERAL OF TEXAS

By

Harry A. Shuford

Harry A. Shuford
Assistant

APPROVED
OPINION
COMMITTEE
BY *[Signature]*
CHAIRMAN

ENCLOSURE