



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Doctor C. A. Shaw, Superintendent
Big Spring State Hospital
Big Spring, Texas

Dear Sir:

Opinion No. 0-4148
Re: Is it mandatory that
Big Spring State Hospital
pay employees leaving the
service immediately upon
the severance of relations?

This is in reply to your letter of October 22, 1941,
which we quote:

"Due to the advance in salaries outside of State Hospitals, it offering more remuneration to employees, it is very difficult to retain people who are able to secure better paying positions, too, in several instances there are those who have been discharged from the service for various reasons. The purpose of this letter is to obtain an opinion as to whether or not it is mandatory that we, the Big Spring State Hospital, pay these employees leaving the service immediately upon the severance of relations. It is our custom to send in our payroll and have warrants issued around the first of each month, and of course, we have no cash fund from which this money could be immediately expended. In several instances we have given an order to the bank for the time served by the employee, and have the warrant made payable to the bank. However, this has resulted in our losing a small amount of money in two instances, and imposes quite a bit of extra work upon our office personnel.

"We will thank you to advise us whether or not we would be liable for suit or whether or not a person so discharged from the service could stay on the grounds legally until they have been paid."

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Big Spring State Hospital was established under authority of Article 3185a, Vernon's Texas Civil Statutes of 1925, which contains the following provisions:

" * * * .

" At the completion of the buildings, and when the said hospital is ready to open, the Board of Control shall appoint a Superintendent and other employees to superintend and carry on the work of such hospital as is now provided by the General Laws of the State of Texas governing such institutions.

"The support and general maintenance of said hospital shall be the same in every respect as is provided for insane hospitals as now provided by law.

" * * * ."

Other statutory provisions relating to the management of such institutions are found in Title 51, Vernon's Civil Statutes of 1925:

"Article 3174. Management

"Each eleemosynary institution established by law shall be managed and controlled in accordance with the provisions of this title. The general control, management and direction of the affairs, property and business of such institutions is vested in the State Board of Control."

"Art. 3176. Powers of superintendent

"The Superintendent shall be the administrative head of the institution to which he is appointed. He shall have the following powers:

"1. To establish such rules and regulations for the government of the institution in his charge, as he deems will best promote the interest and welfare of its inmates.

"2. Where not otherwise provided by law, to appoint the subordinate officers, teachers,

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attendants, and other employes, and to fix their salaries.

"3. To remove for good cause, with the consent of the Board, any officer, teacher or employe.

"4. The care and custody of the buildings, grounds, furniture, and other property pertaining to the institution.

"Art. 3177. Accounts

"The superintendent of each asylum shall be the chief disbursing officer of the institution and subject to the rules of the Board of Control, shall have general charge over everything connected with the institution over which he presides. He shall attend to the enforcement of the laws relating to such institution and to the by-laws provided by such Board, and shall see that the employes faithfully perform their duties. * * *."

Appropriations for the support of Big Spring State Hospital for the current biennium were made by Senate Bill No. 402, Acts of the Regular Session, 47th Legislature, 1941. Among the general provisions contained in Section 2 of said Bill are the following:

"(b) Under written direction of the Board of Control all employes may receive board, room and laundry, except when otherwise limited.

* * *

"(b) If any position for which a salary is herein fixed shall not be filled then such salary shall lapse into the State Treasury. * * *."

"No salary shall be paid to any person unless such person actually discharges assigned duties. * * *."

From a reading of these statutory provisions it will be seen that you, as Superintendent of Big Spring State Hospital,

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have the responsibility for the "hiring and firing" of the other employees, and the management of the fiscal affairs, of that institution, subject to advice and regulation by the State Board of Control, and also subject to statutory regulations. We are informed by the Board of Control that its regulations:

(1) Permit an understanding between the Superintendent of the Hospital and its employees that they may resign, or be discharged, at any time without notice.

(2) Permit the submission and approval of a supplemental payroll, covering wages or salary earned and unpaid, immediately upon the severance of employment. (We recommend this procedure be followed.)

(3) Prohibit anyone, not an employee, from staying on the grounds of the Hospital without official permission.

"A notice (of discharge) terminates the employment regardless of whether the employer had the right to give the notice." 29 Texas Jurisprudence 20.

It is our opinion that a person who has been discharged from the service of Big Spring State Hospital cannot legally, without official permission, stay on the grounds of said hospital until he has been paid. And it is our further opinion that it is not mandatory that Big Spring State Hospital pay employees leaving its service immediately upon the severance of relations; but that such employees should be paid within a reasonable time, making due allowance for the preparation of a supplemental payroll, its approval by the Board of Control, issuance of a warrant by the Comptroller and mailing of the warrant to the ex-employee.

You ask whether you "would be liable for suit." This presents a purely hypothetical question which this department is not authorized to determine. If the procedure above recommended be followed, as we assume it will be, the occasion should not arise for determining your possible liability to suit at the hands of the discharged employee.

APPROVED DEC 3, 1941
Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY BWB CHAIRMAN

By /s/

W. R. Allen
Assistant

WRA:RS

WRA:mw