



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. L. A. Woods
State Superintendent
Department of Education
Austin 11, Texas

Dear Sir:

Opinion No. O-6970

Re: Whether under the provisions of S. B. 38, Acts 1945, 49th Leg., R. S., relative to special education for exceptional children, the Department of Education may make a partial payment at the present time to the schools conducting such classes and then make the final payment in the summer of 1946 after a complete report of expenses has been submitted.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"Senate Bill # 38, Acts of the 49th Legislature, provides special education for exceptional children in Texas and makes an appropriation of \$100,000 for the year beginning September 1, 1945 and ending August 31, 1946. Sections 3 and 4 of Article 2 deal with the manner of reimbursing the schools that provide special classes for these handicapped children.

"At present we have thirty schools operating such special classes, and they have had current expenses since the beginning of school consisting largely of salaries of teachers. This office would like to have your opinion as to whether we would be authorized to make a partial payment to such schools, final payment to come in the summer of 1946 after they make their final report of expenses."

You have also given us the further information that the schools in question have 9-month terms; that the claims will be filed for $4\frac{1}{2}$ months or half of the school term and that none of said claims will exceed the amount of \$50.00 per scholastic. You have further stated that such expenses are in all respects proper expenses under the Act and it is your desire to approve such claims and later to make a final payment in 1946 after said schools make their final reports and claims for expenses under the Act.

Sections 2, 3 and 4 of Article II of Senate Bill 38, 49th Legislature of Texas, read as follows:

"Sec. 2. It is further provided that to be eligible for aid under the provisions of this Act, the school district establishing and maintaining special classes for exceptional children must file with the Division of Special Education in the State Department of Education on or before September 1st of each school year, on forms furnished by the State Department of Education, a tentative budget containing the anticipated expenditures of such special classes. On or before July 15th of each school year, each school district maintaining special classes for exceptional children shall make a detailed, accurate financial record of all moneys paid out by it for maintenance of these classes; and such financial record shall be subject to the approval of the State Superintendent of Public Instruction. The tentative budget and all forms filed with the State Department of Education must be sworn to by the county Superintendent and the Superintendent or Principal of the school making and filing said forms.

"Sec. 3. It is further provided that in order to qualify for reimbursement, the district must include in the receipts of its budget a sum not less than the total per capita cost of educating said exceptional children who are to be taught in special classes. The State Treasurer and the State Department of Education are hereby authorized to pay within the limits set forth in Section 1, Article 5, to the local Board of Education of the school districts establishing and maintaining special classes for exceptional children, not more than the difference

between the per capita cost of instruction and equipment for the normal children of that district in any corresponding grade of said school district, and the average per capita cost required to pay teachers' wages and the cost of special services; provided that no excess cost shall be paid for school buildings, premises, or plant.

"Sec. 4. Failure on the part of the school district to prepare and certify its report of claims for the excess cost of educating exceptional children to the State Department of Education on or before July 15th of any year, and its failure thereafter to prepare and certify such report to the State Department of Education within ten (10) days after receipt of notice of such delinquency sent to it by the State Department of Education, by registered mail, shall constitute a forfeiture by the school district of its right to be reimbursed by the State for the excess cost of educating exceptional children for such year."

Section 1 of Article V of said Senate Bill 38 reads as follows:

"Art. V. Allocation and Appropriation.

"Section 1. The appropriations made under the provisions of this Act and subsequent appropriations are to be used to pay school districts, establishing and maintaining special classes, the excess cost of instructing exceptional children which cost is over and above the average per capita cost of educating normal children in the respective school districts. This aggregate excess cost shall be allocated for payment of teachers' salaries, including corrective teaching, such as lip reading, speech corrective, sight conservation and corrective health habits; necessary school room equipment, and transportation. Such excess cost shall not exceed Two Hundred Dollars (\$200.00) per school year per scholastic."

Section 3 of Article V of said Senate Bill 38 reads, in part, as follows:

"There is hereby appropriated out of any money in the General Revenue Fund of the Treasury of the State of Texas, not otherwise appropriated, the sum of One Hundred Thousand Dollars (\$100,000.00) or so much thereof as may be necessary for the purpose of carrying out the provisions of this Act, for the first year of the biennium beginning September 1, 1945 and ending August 31, 1947. For the last year of the 1945-1947 biennium, there is appropriated out of the General Revenue Fund of the State of Texas, the sum of One Hundred Seventy-five Thousand Dollars carrying out the provisions of this Act."

Section 2 of Article II, supra, provides that each school district maintaining special classes for exceptional children on or before July 15th. of each school year shall make a financial record of all moneys paid out for maintenance of such classes which shall be subject to the approval of the State Superintendent of Public Instruction. Section 3 of Article II, supra, authorizes the State Treasurer and the State Department of Education to pay within the limits set forth in Section 1 of Article V, supra, (not to exceed \$200.00 per year per scholastic) in the manner set out in said Section 3. Allocations and appropriations are provided by Article V, pertinent portions of which are quoted above. Section 4 of Article II, supra, provides a forfeiture of the right of reimbursement when the school fails to certify its report of claims to the State Superintendent on or before July 15th and fails thereafter to prepare and certify such claims within 10 days after receipt of delinquency sent to it by the Department of Education.

The above quoted portions of Senate Bill 38, supra, neither specifically provide for nor specifically prohibit partial payments as outlined in your request but do provide a specific limitation of an amount of not to exceed \$200.00 per year per scholastic. You state that the schools in question have 9-month terms; that the claims will be filed for 4½ months or half of the school term and

Hon. L. A. Woods - Page 5

and that none of said claims will exceed the amount of \$50.00 per scholastic. Undoubtedly, the allowance of such claims would be of material benefit and assistance to said schools and we think that you in your sound administrative discretion would be authorized to allow the claims described by you if you see fit to do so.

Under the facts submitted, we answer your question in the affirmative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Wm. J. Fanning
Wm. J. Fanning
Assistant

WJF:BT (JT)

APPROVED JAN 18, 1946

/s/ Carlos C. Ashley

FIRST ASSISTANT
ATTORNEY GENERAL

THIS OPINION CONSIDERED AND
APPROVED IN LIMITED CONFERENCE