



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL,
ATTORNEY GENERAL**

March 29, 1951

Hon. James B. Pattison, Chairman
Committee on Public Health
House of Representatives
52nd Legislature
Austin, Texas

Opinion No. V-1163

Re: Constitutionality of
committee amendment to
House Bill 151 to es-
tablish a scholarship
program of loans from
State funds to medical
students.

Dear Mr. Pattison:

Your request for an opinion relates to the constitutionality of a law now in effect in the State of Mississippi which provides for loans and scholarships to students desiring to study medicine.

You state that House Bill 151 is now being considered by your committee and that you contemplate substituting in lieu thereof the Mississippi plan, which for the purposes of this discussion is designated as House Bill 431. You desire to know the constitutionality of such a law under the Texas Constitution.

House Bill No. 431 (Mississippi) provides for the creation of a board to be known as the State Medical Education Board and provides for the appointment and the terms of office of the members thereof. The act provides for the employment of the necessary personnel to carry out the terms of such act and provides a procedure for granting loans or scholarships to students who are bona fide students and residents of the State of Mississippi and who desire to become physicians. The purpose of the loan is to enable an applicant to obtain a standard four-year medical education which will qualify such applicant to become a licensed practicing physician and surgeon. Applicants may receive a loan or scholarship in an amount not to exceed \$5,000.00, to be paid in annual installments not exceeding \$1250.00 per annum. These loans or scholarships are conditioned so that the full amount shall be repaid to the State of Mississippi, with four per cent interest from the date of each payment by the State.

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Section 9 of the proposed House Bill 431 provides that all payments of funds for loans or scholarships thereunder shall be made by requisition of the Board signed by the Chairman and Secretary, and directed to the Auditor of Public Accounts, who shall thereupon issue a warrant on the Treasury of the State of Mississippi for the amount fixed in the requisition and payable to the person designated thereon, which warrant upon presentation shall be paid by the treasurer out of any funds appropriated by the Legislature for the purposes provided for under this act. The purpose and intent of the act was to meet the emergency existing in the State of Mississippi from the shortage of doctors in the State by increasing the number of medical students from Mississippi in the various medical schools and inducing such graduates of medical schools to return to Mississippi for the practice of their profession.

You have informed us that the adaptation of the Mississippi plan as a substitute for House Bill 151 will provide for an appropriation of State funds by the Legislature.

The question presented for determination is whether the proposed bill contravenes the provisions of Section 50 of Article III of the Constitution of Texas, which provides:

"The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever."

In Bannock County v. Citizens Bank & Trust Co., 53 Idaho 159, 22 P.2d 674, 680 (1933), the Supreme Court of Idaho was construing the provisions in the Idaho Constitution which said that no county shall "lend, or pledge the credit or faith thereof" or "loan its credit" to any individual, association, or corporation. The court stated:

"In interpreting the sections of the Constitution in question, the language employed must be taken and understood in

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its natural, ordinary, general, and popular sense. . . . In the popular sense, lending or loaning money or credit is at once understood to mean a transaction creating the customary relation of borrower and lender, in which the money is borrowed for a fixed time, and the borrower promises to repay the amount borrowed at a stated time in the future, with interest at a fixed rate. And that is the sense, then, in which the language employed in those sections must be understood, and so understood, no county, for example, shall lend or pledge its credit or faith, directly or indirectly, or in any manner which would create the customary relation of borrower and lender."

It is our opinion that the expenditure involved in the plan under consideration creates the customary relationship of borrower and lender and is therefore a lending of the State's credit within the meaning of Section 50 of Article III of the Constitution of Texas.

In construing the provisions of Section 50 and kindred provisions found in Sections 51 and 52 of Article III of the Constitution, the courts of this State have held that the Legislature is prohibited from authorizing the lending of credit or the making of grants which are not for a public, or governmental, purpose. Bexar County v. Linden, 110 Tex. 339, 220 S.W. 761 (1920); Road Dist. No. 4, Shelby County v. Allred, 123 Tex. 77, 68 S.W.2d 164 (1934); Seydler v. Border, 115 S.W.2d 702 (Tex.Civ.App. 1938, error ref.). If the expenditures are for a public purpose, they are not invalid because private persons are benefited therefrom. Alameda County v. Janssen, 16 Cal.2d 276, 106 P.2d 11, 130 A.L.R. 1141 (1940). However, the carrying out of a governmental function must be the primary object of the grant of credit. Where the expenditure is directly in aid of an individual in his private affairs and results in a benefit to the public only indirectly, it is not made for a public purpose.

Certainly the preservation and promotion of the health of the citizens of the State and the education of physicians are matters of public concern. But House Bill No. 431 goes far beyond the providing of instruction and training for physicians. We cannot escape

the conclusion that the direct benefits of this bill are conferred upon the individuals who are the recipients of the loans, and that the benefits to the public, in the absence of an emergency not here presented, are too indirect to bring it within the orbit of a governmental function.

We have not found any decision in this State in which the question of the constitutionality of loans to individuals for an analogous purpose was presented. In several States, the courts have held statutes authorizing loans to individuals to be unconstitutional, even though the Legislature had enacted the statutes in an effort to promote the general welfare. On the other hand, the courts of some States have taken a broader view of the scope of public purposes and have upheld loans and grants to individuals in various circumstances where the court thought the Legislature was justified in considering the public good benefited thereby. However, we believe that the decisions of the Texas courts in other situations indicate that the meaning of public purpose cannot be broadened to this extent.

This office, in holding that there was no statutory authority for the creation of a student loan fund out of funds appropriated to the Texas State University for Negroes, stated that the presence of such statutory authority would raise serious constitutional questions, in view of Section 50 of Article III of the Constitution. Lee Letter Opinion to W. R. Banks, dated June 3, 1950.

When a proposal for making loans to World War II veterans for purchase of land was before the Legislature it was apparently deemed necessary by the Legislature to amend the State Constitution before such loans could be made. It is our opinion that a similar constitutional amendment would be necessary in order for the "Mississippi Plan" to be valid in this State.

SUMMARY

The "Mississippi Plan" providing for loans from State funds to students desiring to study medicine cannot be validly adopted

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by the Legislature in the absence of a
constitutional amendment specifically
authorizing such plan.

APPROVED:

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Yours very truly,

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