



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

September 21, 1953

Honorable Allan Shivers  
Governor of Texas  
Austin, Texas

Letter Opinion No. MS-92

Re: Legality of making a  
deficiency grant to  
the Board of Vocational  
Nurse Examiners under  
the submitted request.

Dear Governor Shivers:

You have asked this office for an opinion concerning the form and legality of a request by the Board of Vocational Nurse Examiners for a deficiency grant under Article 4351, Vernon's Civil Statutes.

The request, dated September 1, 1953, is for a grant to supplement the appropriation for seasonal help during the fiscal year 1953-1954, which it states will be exhausted within 30 days. Article 4351 provides that the estimate of the amount necessary to cover a deficiency shall be filed with the Governor "at least thirty days before such deficiency shall occur." From a reading of the entire request, it appears that the intended meaning of the statement made therein is that the appropriation will be exhausted 30 days from the date of the request rather than at some time prior to the expiration of the 30-day period. We are of the opinion that the request has been filed in due time, and we find that it is in proper form.

The principles governing the legality of granting this request were summarized in Attorney General's Opinion O-2118 (1940) as follows:

"We deduce the following as a legal rule or formula to govern the issuance of deficiency warrants. Where the Legislature has made a specific appropriation for a purpose and thereafter there arises a casual deficiency in the revenues thus appropriated, the Governor, upon proper application therefor by one clothed with the power to incur such indebtedness on behalf of the State, may approve a claim for a deficiency warrant to extend to the next session of the Legislature or to the beginning of the next fiscal year.

Honorable Allan Shivers, page 2 (LO No. MS-92)

"Mere necessity for additional revenues is never the casual deficiency that would authorize a warrant. The deficiency must have been unforeseeable when the appropriation was made. The casual deficiency may arise, however, with respect to any specific appropriation where the intention of the Legislature is to provide for a definite service, supply or project, rather than to appropriate a limited sum to be expended for a stated purpose."

The request states that the immediate drain on the Board's seasonal help appropriation is occasioned by the unprecedented failure of its registrants to get their renewal fees in by the due date, September 1, 1953. As a consequence, work which was expected to be paid for out of the appropriation for the year ending August 31, 1953, must be paid for out of the current appropriation. On the basis of this statement, it is our opinion that this circumstance, which was unforeseeable at the time the Legislature made the appropriation for the current fiscal year, would authorize the granting of an additional appropriation for seasonal help to enable the employment of sufficient personnel to do the work which normally would have been performed during the preceding fiscal year.

We also believe you would be authorized to make a grant for additional personnel which is absolutely necessary to carry on functions which the Board is required to perform. In Opinion O-2118 it is stated:

"The constitutional purpose, therefore, is the item of maintenance, or other contingent expense, and the sum named is but the legislative estimate of the amount necessary therefor. The duty of maintenance and carrying on is imposed by the law and if the revenue appropriated to that legitimate and necessary end proves to be insufficient, it amounts to the casual deficiency contemplated by the Constitution and statutes."

A deficiency grant could not be made merely for the purpose of employing additional personnel which might improve or facilitate the performance of the Board's functions. However, where the Legislature has placed certain duties upon the Board and has indicated an intention that the performance of these duties is not to be suspended, a deficiency resulting from its

Honorable Allan Shivers, page 3 (LO No. MS-92)

failure to make a sufficient appropriation toward that necessary end would support a grant under Article 4351. A determination of whether the Board could continue to perform its essential duties within the limits of the legislative appropriation involves fact considerations falling primarily within your judgment and discretion.

Your attention is called to the following provision in the General Appropriation Act, Chapter 81, Acts of the 53rd Legislature, at page 334:

"In those instances where the language of such appropriation items does explicitly authorize the use of funds for paying salaries and wages, such employees shall not be paid a larger amount than that provided in the regular appropriated salary items for similar positions in such agency of the State. In the event there are no similar positions within such agency, then such employees shall not be paid a larger amount than that provided for similar work or positions elsewhere in the State Government. . . ."

Any sum granted to supplement the Board's appropriation for seasonal help must be expended in accordance with the regulations governing the original appropriation. In the application it is stated that the Board proposes to increase the salaries payable out of the deficiency grant by 25 per cent to offset charges for deficiency warrant discount. It is our opinion that such an increase would be unlawful. We believe the salary paid to an employee, within the meaning of this provision, is the amount for which the warrant is drawn and not its value after discount.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
Mary K. Wall  
Assistant

MKW:wb