



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

October 7, 1953

Hon. John H. Winters
Executive Director
State Department of
Public Welfare
Austin, Texas

Letter Opinion No. MS-99

Re: Payment for services of Distributing Agents of Commodity Distribution Division of Department of Public Welfare, and for shipping and/or delivery charges on commodities received from the Federal Government.

Dear Mr. Winters:

Your request for an opinion reads as follows:

"Does House Bill 441, Acts 53rd Legislature, Regular Session, 1953, Chapter 305, p. 757, contain a specific appropriation out of the special account in the State Treasury, consisting of assessments collected from recipients of commodities under the Program for distribution of commodities received from departments and agencies of the Federal Government, for the purpose of reimbursing the revolving fund in each Distribution District from time to time as may be required?"

"Can the State Department of Public Welfare pay for the services of Distributing Agents and for the shipping and/or delivery charges in connection with the receipt of commodities under the Program in each Distribution District from money in the revolving fund in each Distribution District?"

Your questions involve the construction of Chapter 305, Acts of the 53rd Legislature, 1953, page 757, in the light of Section 6 of Article VIII of the Constitution of Texas.

Section 6 of Article VIII of the Constitution provides in part:

"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law
. . . ."

In summary, Chapter 305 (House Bill 441) provides for the establishment of a new division of the State Department of

Public Welfare to be known as the Commodity Distribution Division, to handle the distribution of agricultural commodities received by the State from departments and agencies of the United States Government; the establishment of Distribution Districts; the employment of Distributing Agents and other personnel necessary to effectuate the provisions of the Act; the establishment of a special account in the State Treasury consisting of assessments collected from recipients of commodities which shall be subject to withdrawals upon authorization of the Executive Director of the State Department of Public Welfare; a restriction of the use of these funds for, and only for, the necessary economic operation of the Program; the establishment by the State Department of Public Welfare of a revolving fund in each Distribution District for the purpose of making emergency payments for services or goods, which fund shall be under the direction of the State Department of Public Welfare, the amount of money in each of the Distribution District revolving funds to be set by the Executive Director of the State Department of Public Welfare; the initial creation of the revolving funds by a line item appropriation; and reimbursement of the revolving funds out of assessments collected.

Section 2 of the bill provides line item appropriations for the expenses in connection with the operation of the central office. No line item appropriation was made to cover the necessary costs of paying for the services of Distributing Agents authorized, nor to pay for shipping and/or delivery cost on commodities received under the Program, nor to reimburse the revolving funds created.

However, it is a well established principle that it is not to be presumed that the Legislature intended to do a vain thing, and where there is sufficient language susceptible of a construction which will effect the manifest intent of the Legislature and the purposes of a statutory enactment such a construction should be followed. Hood v. State, 90 S.W.2d 1101 (Tex.Civ.App., 1936, error dismissed); 39 Tex. Jur. 223, Statutes, Sec. 118.

The absence of a line item appropriation for the payment of these essential items of expense does not preclude consideration of appropriations made elsewhere in the bill. In making an appropriation it is not necessary to adopt the formal method common in what are called "Appropriation Bills". It is sufficient if the Legislature authorizes the expenditure by law. Cherokee County v. Odom, 297 S.W. 1055 (Tex. Civ.App. 1927). In the case of McCombs v. Dallas County, 136 S.W.2d 975 (Tex.Civ.App. 1940), the Court had before it a

question as to whether the Legislature had made an appropriation, and in the determination of that question it said:

" . . . It is settled that no particular form of words is required to render an appropriation specific within the meaning of the constitutional provision under discussion. It is sufficient if the Legislature authorizes the expenditure by law, and specifies the purpose for which the appropriation is made. An appropriation can be made for all funds coming from certain sources and deposited in a special fund for a designated purpose. In such instances, it is not necessary for the appropriating Act to name a certain sum or even a certain maximum sum. 38 Tex.Jur. pp. 844-845, Sec. 27, and authorities there cited. . . ." (Emphasis supplied.).

The Court also cited the case of National Biscuit Company v. State, 134 Tex. 293, 135 S.W.2d 687 (1940). An examination of that case reveals that the last above quoted holding of the Court in the McCombs case is a verbatim recitation of the holding of the Supreme Court of Texas in the National Biscuit Company case.

With the above cited holdings in mind, we now refer to the pertinent provisions of the bill insofar as they deal with the establishment and the reimbursement of the revolving funds created thereby. The bill provides:

"Creation and reimbursement of said revolving fund shall be paid out of assessments collected by the State Department of Public Welfare from the recipients of commodities." (Emphasis supplied.).

The above language, when considered in connection with the intended purpose of the bill as a whole, the intent of the Legislature to provide a means for the effective operation of the Program, and the holdings of the above cited authorities, constitutes, in our opinion, a specific appropriation of funds from the special account in the State Treasury, for the purpose of reimbursing the revolving fund in each Distribution District, as may be necessary from time to time. It is also our opinion that the money in the revolving fund in each Distribution District may be used to pay for the necessary services of Distributing Agents and for shipping and/or delivery charges in connection with the receipt of commodities under the Program.

Hon. John H. Winters, page 4 (MS-99)

Both of your questions are answered in the affirmative.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By /s/ James N. Castleberry, Jr.
James N. Castleberry,
Assistant

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