



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 18, 1957

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-300

Re: Whether certain appropriations to the Board for Texas State Hospitals and Special Schools for the payment of refunds are supported by pre-existing law.

Dear Mr. Calvert:

You have requested whether the appropriations contained in Item 1 under the heading of pay patient refunds and Section 3 of the riders to the appropriations to the Board for Texas State Hospitals and Special Schools are supported by pre-existing law.

Item 1 under the heading of pay patient refunds to the appropriation to the Board for Texas State Hospitals and Special Schools contained in Article II of House Bill 133, Acts of the 55th Legislature, 1957, provides:

"For the Years Ending
August 31, August 31,
1958 1959

"Out of General Revenue
Fund:

"1. There is hereby appropriated out of the General Revenue Fund to the Board for Texas State Hospitals and Special Schools for the Payment of pay patient refunds, which are approved by the business managers of the respective institutions under the Hospital Board, the sum of

\$10,000

\$10,000

"All receipts to institutions under the Board for Texas State Hospitals and Special Schools for pay patient collections shall be deposited to the credit of the General Revenue Fund. Disbursements of refunds shall be made by the Central Office only after receiving approval of the Business Manager of the respective institutions."

Article 3196a, Vernon's Civil Statutes, provides for the admission and care of mentally ill persons and authorizes the Board to charge relatives and guardians of the estate of mentally ill patients for the care and treatment of such patients. Attorney General's Opinion WW-253 (1957). There is no provision, however, in Article 3196a or any other article applicable to the Board for Texas State Hospitals and Special Schools which provides for the payment of refunds of money collected for the care and treatment of patients at the institutions under the control of the Hospital Board.

Section 44 of Article III of the Constitution of Texas provides:

"The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law." (Emphasis added)

This provision has been construed by the courts of this State to mean that the Legislature cannot appropriate State money to any individual "unless at the very time appropriation is made there is already in force some valid law constituting the claim the appropriation is made to pay a legal and valid obligation of the State." Austin National Bank v. Sheppard, 123 Tex. 272, 71 S.W.2d 242 (1934). See also Fort Worth Cavalry Club v. Sheppard, 125 Tex. 339, 83 S.W.2d 660 (1935); State v. Steck Company, 236 S.W. 2d 866, Tex. Civ. App. (1951, error ref.); Attorney General's Opinion WW-96 (1957); Attorney General's Opinion WW-160 (1957). By a legal obligation referred to above, is meant such an obligation as would form the basis of a judgment

against the State in a court of competent jurisdiction in the event it should permit itself to be sued. Austin National Bank v. Sheppard, supra.

In Corsicana Cotton Mills v. Sheppard, 123 Tex. 352, 71 S.W.2d 247, it was held that where a corporation volunteers the payment of taxes, a legislative appropriation to refund such payment of taxes violated the provisions of Section 44 of Article III in that the corporation had no legal claim against the State for their repayment at the time the appropriation was made, and, therefore, the appropriation was not supported by pre-existing law. However, it was held in State v. Akin Product Company, 155 Tex. , 286 S.W.2d 110, that taxes paid under duress of an unconstitutional act may be refunded.

In view of the foregoing, it is our opinion that the above quoted appropriation appropriates money for refund of moneys paid both voluntarily and under duress. Insofar as the appropriation appropriates money for the payment of refunds that do not constitute a legal obligation as that term is defined in Austin National Bank v. Sheppard, supra, such appropriation is not supported by pre-existing law. Insofar as the above quoted appropriation appropriates money for refund of moneys paid under duress, the appropriation is supported by pre-existing law. You are, therefore, advised that the payment from this appropriation for pay patient refunds will depend on the facts in each case in which the claim for refund is presented.

Section 3 of the riders to the appropriation to the Board for Texas State Hospitals and Special Schools in House Bill 133 provides:

"Sec. 3. Services to employees and guests. In order to reimburse equitably the appropriation items in this Article from which expenditures are made for services to employees and guests, the following reimbursement rates and rules shall apply:

"Services furnished by the institutions to employees shall be valued at not less than the following:

- "\$30 per month for meals for adults
- "\$15 per month for meals for children, ages 2 through 15
- "\$ 5 per month for laundry
- "\$15 per month for lodging, excluding medical personnel of hospital system
- "\$15 per month per room for the first room for lodging of medical personnel of

hospital system and \$10 per month per room for each additional room

"Collection for services rendered employees and guests shall be made by a deduction from the recipient's salary or by cash payment in advance. Such deductions and other receipts for these services from employees and guests are hereby reappropriated to the 'Other Operating Expenses' of the institution. Refunds for excess collections shall be made from the appropriation to which the collection was deposited.

"Employees residing away from the grounds of the institutions in which they are employed shall pay cash for only such meals at the institutions as they may actually take, and there shall be no deductions from the regular salary payment due employees of the respective institutions for institutional services or emoluments not actually received by said employees."

In Attorney General's Opinion WW-265 (1957), it was held:

"In Opinion WW-96 this office held that the General Appropriation Bill may direct appropriation of money and may detail, limit or restrict the use of funds so appropriated where such provisions are necessarily connected with and incidental to the appropriation and use of the funds. Conley v. Daughters of the Republic of Texas, 106 Tex. 80, 156 S.W. 197 (1913).

"Such provisions concerning accounting procedures and directions as to the method of expenditure and reimbursement of certain funds are permissible and proper so long as they do not conflict with the general law on the subject. Attorney General's Opinion V-1254. However, general legislation constitutes a separate subject and cannot be included within a General Appropriation Bill, and a rider to a general appropriation bill cannot repeal, modify or amend an existing general law. Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559 (1946); Linden v. Finley, 92 Tex. 451, 49 S.W. 578 (1899); State v. Steele, 57 Tex. 203 (1882); Attorney General's Opinion No. V-1254."

Applying the principles of law announced in Attorney General's Opinion WW-265, it is noted that Section 3 of Article

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It not only provides for the emoluments of employees of the several institutions under the jurisdiction and control of the Hospital Board, but also attempts to authorize expenditures for services to guests. Such provisions do not concern the direct appropriation of money nor concern accounting procedures and directions as to method of expenditure, but authorize the expansion of services which are not now authorized by general law. To this extent its provisions constitute a proper subject for general legislation in violation of Section 35 of Article III of the Constitution of Texas. Attorney General's Opinion WW-96.

Therefore, you are advised that Section 3 of Article II, House Bill 133, Acts of the 55th Legislature, 1957, Chapter 385, is supported by pre-existing law insofar as its provisions are applicable to employees of institutions under the jurisdiction and control of the Hospital Board. You are further advised that its provisions are not supported by pre-existing law insofar as it applies to "guests", and further, such provisions violate the provisions of Section 35 of Article III of the Constitution of Texas.

SUMMARY

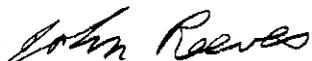
Moneys appropriated for pay patient refunds are supported by pre-existing law insofar as it authorizes the payment of refund of moneys collected under duress. Section 3 of Article II of House Bill 133, Acts of the 55th Legislature, is supported by pre-existing law insofar as it provides for the emoluments of employees of the institutions under

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the jurisdiction and control of the
Board for Texas State Hospitals and
Special Schools.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:jl

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL
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