



**THE ATTORNEY GENERAL
OF TEXAS**

**WAGGONER CARR
ATTORNEY GENERAL**

AUSTIN 11, TEXAS

March 18, 1963

This Opinion
Affirms Opinion
#WW-896

Hon. Grady Hazlewood, Chairman
Senate Finance Committee
Austin, Texas

Opinion No. C- 38

Re: Assuming no change in exist-
ing law, whether the Legis-
lature has the authority to
make an appropriation to the
Board for Texas State Hospi-
tals and Special Schools
for the stated purposes and
under the stated facts.

Dear Senator Hazlewood:

You have requested the opinion of this office as to whether, assuming no change in existing law, the Legislature has the authority to make an appropriation to the Board for Texas State Hospitals and Special Schools, or to its individual institutions, from which funds could be paid the necessary travel expenses of its employees and of patients, incurred where such patients are returning to a State Tuberculosis Hospital after having left against medical advice, while in an infectious stage of the disease.

Your request is specifically concerned with patients who voluntarily sought initial admission to a State Tuberculosis Hospital, who left such State Hospital against medical advice rather than by discharge, who are returned to such State Hospital for further treatment without a quarantine order, and who are residents of Texas.

With regard to the question of the authority of the Board for Texas State Hospitals and Special Schools and its individual institutions to hold the patients admitted to its care without their consent, regardless of their mode of original admittance, this office has previously issued Attorney General's Opinion No. WW-896 (1960). The holding of this opinion is reaffirmed and the following is quoted therefrom:

"It is our opinion that the provisions
of the Act to fight and control the disease

of tuberculosis are clear. While the Tuberculosis Code provides a method for voluntary admission by persons in a contagious condition with this disease to State hospitals, this does not mean that such persons remain in these tubercular hospitals as guests and free to leave at their discretion. It is our opinion that the mode of admission to such hospitals is only ancillary, for only one class of persons are eligible to gain admittance and they are those who have tuberculosis in an active, contagious and communicable state and who cannot be treated safely in the community from which they come. Once these persons are admitted either voluntarily or involuntarily, your Board is charged with the duty and the responsibility of caring for such persons until such time as they can be pronounced free from this contagious disease."

It can thus be seen that once a patient is admitted under the Texas Tuberculosis Code (Article 4477-11, V.C.S.) and remains in an active, contagious and communicable state, it is the duty of the Board and its individual hospitals to restrain such persons as securely as possible. In Section 4 of this Code, we find the following statement by the Legislature:

"Tuberculosis in a contagious, infectious, or communicable state is hereby declared to be dangerous to public health."

Section 51 of Article III of the Constitution of Texas forbids the Legislature to give or grant any public moneys to any person. It would appear that this section of the Constitution would forbid the appropriation of money to pay travel expenses of patients returning to a State Hospital after having departed therefrom voluntarily. The legislative intent and statement of public policy contained in the Texas Tuberculosis Code clearly reveals, however, that tuberculosis is considered to be a serious danger to public health. The Board has, in the final analysis, no choice with respect to obtaining the prompt return of such persons to the proper institution. This is a matter that vitally affects public health, and the expenditure is for a purely governmental purpose, giving public money to an individual only as a mere incident to the paramount public purpose behind the expenditure. State v. City of Austin, 160 Tex. 348, 331 S.W.2d 737 (1960).

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It is thus the opinion of this office that an appropriation to provide funds for the travel expenses of Board employees and of patients, incurred where such patients are returned to a State Tuberculosis Hospital after having left against medical advice, while in an infectious stage of the disease, is proper. Such appropriation is for the purpose of protecting the public against the dangers of a seriously infectious disease, and it cannot be said that the expenditure is one that provides an unconstitutional benefit to a private person.

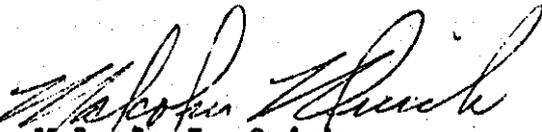
SUMMARY

Under existing law, the Legislature has the authority to make an appropriation to the Board for Texas State Hospitals and Special Schools or its individual institutions, from which funds could be paid the necessary travel expenses of its employees and of patients, incurred where such patients are returned to a State Tuberculosis Hospital after having left against medical advice while in an infectious stage of the disease.

Such an appropriation does not violate the constitutional prohibition against the payment of State funds to private individuals, contained in Section 51, Article III, for the reason that such travel expenses are in furtherance of a program necessary to the public health and welfare.

Yours very truly,

WAGGONER CARR
Attorney General

By 
Malcolm L. Quick
Assistant

MLQ:ms

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APPROVED:

OPINION COMMITTEE
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APPROVED FOR THE ATTORNEY GENERAL
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