



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Beeman Strong  
Honorable M. E. Sadler  
Honorable Marvin Leonard  
State Board of Public Welfare  
Austin, Texas

Gentlemen:

Opinion No. O-1550

Re: The date upon which the  
State Board of Public Wel-  
fare must assume its duties  
and appoint an executive  
Director of the Department  
of Public Welfare.

We have given careful consideration to your request of August 24, 1959, for the opinion of the Attorney General on the following questions which we quote from your letter:

"(1) Can the several agencies of the State whose duties are transferred by this Act to the State Department of Public Welfare continue to operate under the present setup, say for a period of thirty days, after August 31st, paying the salaries provided in the appropriation bill, without the State Board assuming supervision of such agencies?"

"(2) If in answer to above question you hold that it will be necessary for the State Board to assume supervision after August 31st, can the present agencies continue to operate during such period under the present setup (the employees of the respective agencies receiving the salaries provided in the appropriation bill), without the appointment of an Executive Director by the State Board?"

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The State Department of Public Welfare is created by Senate Bill No. 36 of the Regular Session of the Forty-sixth Legislature, Section 36a of said Act which you quoted in your letter reads as follows:

"The effective date of this Act shall be September 1, 1939. Thereafter, the several officers and agencies of the State whose duties are transferred by this Act to the State Department shall continue to discharge the respective duties which they were discharging at the time of the taking effect of this Act, until the State Board shall certify in writing, to the Secretary of State and the Comptroller of Public Accounts, that the State Department of Public Welfare is organized, as prescribed in this Act and is prepared to assume the duties assigned to it by the provisions of this Act."

The above-quoted provision apparently contemplates that the State Board of Public Welfare may postpone the assumption of its duties prescribed in Senate Bill No. 36 until some time after September 1, 1939, and that the various agencies committed by this Act to the supervision of the new Board shall continue to function under the former setup, i.e., under the supervision of the Board of Control. We find, however, upon referring to the Departmental Appropriation Bill, being Senate Bill No. 427, of the 46th Legislature, that no appropriation has been made to the Board of Control for the biennium beginning September 1, 1939, for the operation of several departments transferred to the State Department of Public Welfare by Senate Bill No. 36. No appropriation has been made to the (1) Texas Old Age Assistance Commission (2) The Texas Relief Commission or (3) The Child Welfare Department. We find only an appropriation to the State Department of Public Welfare which appropriation is subdivided into three divisions, being (1) the Division of Old Age Assistance (2) the General Relief Division and (3) the Division of Child Welfare. In the rider to the appropriation to the State Department of Public Welfare we find the following language:

"Provided further that none of the rights, powers and duties herein created and delegated

shall be exercised by any department or board except by the State Department of Public Welfare and none of the appropriations herein made shall be expended except by said Department and the consent and approval of the State Board of Public Welfare as to policy shall be necessary before any expenditures can be made under these appropriations?"

It is, therefore, apparent that the Old Age Assistance Commission, the Texas Relief Commission and the Department of Child Welfare cannot continue to function under the supervision of the Board of Control after August 31, 1939; for the reason that no money is provided for the operation of these three agencies except as they have become a part of the State Department of Public Welfare under the supervision of the State Board of Public Welfare.

Our answer to your first question must therefore be that the several agencies of the State whose duties are transferred to the State Department of Public Welfare cannot continue to operate under the present setup, i.e., under the Board of Control after August 31, 1939, for the reason that the Legislature has made no provision for the payment of the expenses of such operation.

Considering now your second question as to whether the present agencies may continue to operate after August 31, 1939, under the supervision of the State Welfare Board without the appointment of an Executive Director.

We hereinafter quote certain provisions from Senate Bill No. 36 which we believe control the question:

"Section 3.a. The Board shall select and appoint, with the advice and consent of two-thirds (2/3) of the membership of the Senate, an Executive Director of the Department of Public Welfare, who shall be the executive and administrative officer of the State Department and shall discharge all administrative and executive functions of the State Department.\* \* \*"

"Section 3.c. The Board, its agents, representatives and employees shall constitute the

State Department of Public Welfare and whenever, by any of the provisions of this Act, or of any other Act, any right, power or duty is imposed or conferred on the State Department of Public Welfare, the right, power or duty so imposed or conferred shall be possessed and exercised by the Executive Director unless any such right, power or duty is specifically delegated to the duly appointed agents or employees of such department, or any of them by this Act or by an appropriate rule, regulation or order of the State Board."

"Section 4. The Executive Director shall be the executive and administrative officer of the State Department. The Executive Director, with the consent and approval of a majority of the members of the Board shall: \* \* \* b. Fix objective standards for all positions included in the classifications."

"Section 6a. \* \* \*The Executive Director shall have the power . . . to select, appoint, and discharge such assistants, clerks, stenographers, auditors, bookkeepers, and clerical assistants as may be necessary in the administration of the duties imposed upon the State Department of Public Welfare \* \* \*"

We wish to call particular attention to Section  
37b:

"All assistance benefits provided for under the terms of this Act shall be paid by vouchers or warrants drawn by the State Comptroller on the 'State Department of Public Welfare Fund'; for the purpose of permitting the State Comptroller to properly draw and issue such vouchers or warrants, the State Department of Public Welfare shall furnish the Comptroller with a list or roll of those entitled to assistance from time to time, together with the amount to which each recipient is entitled. When such vouchers or warrants have been drawn they shall be delivered to the Executive Director of the State Department of Public Welfare, who in turn shall

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supervise the delivery of same to the persons  
entitled thereto."

We also wish to call your attention to Section 5  
of the Act, which reads in part:

"The State Department shall be charged with  
the administration of the welfare activities of the  
State as hereinafter provided. The State Depart-  
ment shall:

\* \* \*

"Establish and provide such method of local  
administration as is deemed advisable, and pro-  
vide such personnel as may be found necessary for  
carrying out in an economical way the administra-  
tion of this Act;"

We believe that the above quoted provisions from  
Senate Bill No. 36 clearly evidence an intention on the part  
of the Legislature to place all administrative duties pro-  
vided in the Act in the hands of the Executive Director,  
the Board of Public Welfare being intended merely as a super-  
visory body. In as much as the Act clearly places the re-  
sponsibility for the administration of the multifarious  
duties of the State Department of Public Welfare in the  
hands of the Executive Director, it is our opinion that  
said department cannot function without the appointment of  
the Executive Director.

We therefore respectfully advise you that under  
the Act, the first duty of the Board upon qualifying and  
after electing a Chairman shall be to select and appoint  
an Executive Director as provided in Section 3a.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed)  
Walter R. Koch  
Assistant

WRK:LM

Approved: Aug. 31, 1939.  
(Signed) Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE  
By EWB-Chairman