



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

BERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 9-1742

Re: Advancement to counties for
school transportation aid
under the provisions of House
Bill No. 933, Acts, 46th Legis-
lature, Regular Session

We are in receipt of your letter of November 27,
1939, which reads as follows:

"I am attaching hereto a complete file
covering partial payments of grants for the
years 1939-1940 as provided in Section 10 of
House Bill No. 933 passed at the Regular Ses-
sion of the Forty-sixth Legislature.

"Is this department authorized to issue
warrant in payment of this claim in its present
status?

"I shall thank you to return this file with
your opinion."

In order to clearly present the facts and ques-
tions submitted to this department, we consider it neces-
sary to outline the material contained in the file accom-
panying your letter of request. The warrants which are
proposed to be issued to approximately one hundred ninety
counties in the state of Texas are in amounts ranging from
a few dollars per warrant to in excess of \$25,000.00 per
warrant, totaling \$1,067,915.00. The claims presented to
your department are listed in the following manner:

"Transportation Report

<u>"District</u>	<u>Amount of Warrant</u>
Anderson County County Board	\$17,749.00 Transportation
Angelina County County Board	11,784.00 Transportation"

Attached to this list, which was apparently submitted to the State Auditor, is the following certificate which has not been signed or executed.

"I, Tom King, State Auditor, certify that the herein order passed by the Joint Legislative Advisory Committee directing the payment of \$1,067,915.00 is a procedure which will not prevent a complete audit of the transportation accounts as provided in House Bill No. 933 before final payments are made.

State Auditor and Efficiency Expert"

There is also attached to said list of proposed warrants the following resolution:

"RESOLVED, that the Joint Legislative Advisory Committee, under authority vested in it by House Bill No. 933, Acts of the Forty-sixth Legislature, Regular Session, hereby approves for payment the sum of \$1,067,915.00 for transportation.

"The Joint Legislative Advisory Committee hereby authorizes and directs the Comptroller of Public Accounts of the State of Texas to issue his warrants against the State Treasury made to the respective county boards of education listed herein against appropriation A 786 and deliver same to the Director of Equalization for transmittal to the various county depositories."

This resolution is signed by Olan R. Van Zandt, Chairman, Joint Legislative Advisory Committee.

The correspondence in the file submitted discloses that on November 7, 1939, State Superintendent L. A. Woods transmitted the foregoing list of warrants to Honorable George H. Sheppard, State Comptroller, stating that on October 10, 1939, "transportation aid was granted to the county boards of education whose names appear on the attached list in amounts set opposite the names," by the Joint Legislative Advisory Committee. The following resolution passed by the Joint Legislative Advisory Committee on said date is set out in the letter:

"Mr. Smith moved that the Committee authorize the Department of Education to make remittances to the several school transportation systems of Texas, as authorized in Section 10 of House Bill #933, in an amount of fifty per cent of the actual grants approved for payment for 1938-1939 and all future payments of such transportation grants shall be audited and adjusted for payment by the Auditor in charge of rural aid before any such payments are made. Motion unanimously carried."

There is also attached to said letter the following sworn statement by State Superintendent L. A. Woods:

"This is to certify that the several grants herein stated, aggregating \$1,067,915.00 are correct and are unpaid and are due and payable as shown in the resolution of the Joint Legislative Advisory Committee."

Under date of November 21, 1939, State Superintendent L. A. Woods transmitted the above mentioned list of warrants to Honorable Tom King, State Auditor and Efficiency Expert, requesting that he audit the data therewith presented and give his approval or disapproval. The Honorable Tom C. King, State Auditor, answered this request on November 22, 1939, as follows:

"Your letter requests that I audit the data and file presented and approve or disapprove same for payment.

"I regret the necessity of returning to you your request for a partial advance disbursement

of transportation aid funds in the amount of \$1,067,915.00, appropriated under H. B. 933 passed by the 46th Regular Session of the Texas Legislature, for compliance with the following sections or parts of the following sections of the act: Sections 1, 2, 3, 4, 6, 8, 10, 12, 13, 14, 15, 16, 17, and 24.

"The file submitted by you with your letter of November 21, 1939, is being returned to you herewith without action by this department due to inadequate information in the application, nor has such information been submitted to this office in proper form for auditing."

On November 23, 1939, the State Superintendent notified the Chairman of the Joint Legislative Advisory Committee that the State Auditor had declined to give his approval to the payment of said claims and therefore the State Superintendent was appealing this case to the Joint Legislative Advisory Committee for a decision on the matter.

The Chairman of the Joint Legislative Advisory Committee replied to this letter on November 24, 1939. We quote in part from his letter since it suggests the theory upon which the Joint Legislative Advisory Committee and the State Department of Education directed the Comptroller to issue the warrants in question:

". . . I also note that you have asked the Joint Legislative Advisory Committee, whose powers are particularly set out in Section 1 of said Bill and in Section 17 thereof, also, to take this matter into consideration.

"In view of the joint authority of said Committee and yourself to allocate and expend monies appropriated in said Bill for the purpose of more equalizing education opportunities in Texas, I as Chairman of said Committee, consider that the authority granted in Section 1 is of superior authority to that granted the State Auditor's Department in Section 17 thereof. However, in view of the controversy which has arisen, and in recognition of the appeal taken to said Committee, I am directed by said Committee as Chairman thereof to pass to you the following information:

"The Committee has taken up and considered the appeal in question as shown by the letter attached and after full deliberation and consideration thereof again orders the payment of \$1,067,915, as shown by the attached order passed by the Committee on October 10 and shown in your letter to the Comptroller under date of November 7, and you are further advised that said Joint Legislative Advisory Committee in all things approves your asking the Comptroller to issue warrants as heretofore outlined."

We shall not attempt to review all of House Bill No. 933, however, it will be necessary to discuss in general the provisions of the Act.

House Bill No. 933, Acts of the Forty-sixth Legislature, commonly known as the Rural Aid Equalization Law, appropriates \$6,825,827.00 for the aid of public schools meeting the requirements of the Act for the school year ending August 31, 1940, and allocates \$2,160,373.00 for transportation aid. (Sections 1 and 11). Allocations are also made for salary aid and high school tuition aid. All school districts in the State of Texas are not entitled to participate in the distribution of the money thus appropriated but the Act contains detailed qualifications, requirements, provisions and procedure to be followed before the money therein appropriated shall be paid to the various districts. Some of the elements to be taken into consideration in determining the eligibility of a school district to receive aid under this Act are that it shall come within certain minimum and maximum scholastic population brackets (Section 2); the school shall not be located within two and one-half miles of another school of the same race (Section 3); the district must be voting, levying and collecting for the current year a local maintenance school tax of not less than fifty cents on the one hundred dollars valuation (Section 6); proper applications must be filed before October 1, 1939, and approved and audited and allotments made based upon such applications (Sections 13, 16, 17, 23); districts must show a budgetary need for aid (Sections 10, 12 and 13) and other provisions not necessary to mention here.

Section 10, which specifically refers to transportation aid, reads in part as follows:

"The expense of such transportation shall be paid on the basis of budgetary need as indicated by approved State Aid application, out of the funds herein allocated for transportation aid, . . ."

Section 13 provides that "no application for aid shall be approved until all applications filed on or before October 1 of the current year have been considered" and also reads in part:

". . . Provided, also, that all aid granted out of the funds herein provided shall be allotted only on the basis of need, based upon a proper budgeting of each district asking for any type of aid. The application shall be sworn to by the County Superintendent, president and secretary of the board of trustees of each of the schools applying for aid. All aid granted out of the funds provided shall be allotted only on the basis of need based upon an approved budget of each district asking for any form of aid, except as otherwise provided in this Act. All applications for aid authorized herein shall be on file with the State Department of Education not later than October 1 of each year of the biennium, and any school not filing such application before such date of each year shall not be eligible for aid for the current year and shall not be considered or approved for the type of aid applied for."

It is provided in Section 12 that:

". . . It shall be the duty of the State Superintendent of Public Instruction to appoint the number of Deputy State Superintendents hereinafter authorized to make a thorough investigation, in person, of the grounds, building equipment, teaching staff, and financial condition of each school applying for aid; and no aid shall be given unless it can be shown that all provisions of this Act have been complied with, and that such amount of aid is actually needed. . ."

The Legislature foresaw the desirability of making payment to the various school districts without extended delay and provided the method for so doing in Section 16 which

reads in part:

"Not later than January 15 of each year, the state inspection of all Rural Aid Schools shall be completed. Initial payment by warrant of not more than fifty per cent (50%) of the total amount al-
lotted to any one school shall then be made, and the final payments shall be made on a percentage basis to such schools in such manner that all schools whose applications for aid have been approved, so that each school will receive the same proportion of aid."

Section 22 contains the following provisions:

"All applications . . . for transportation aid coming within the general provisions of Section 10 of this Act shall first be considered, and if approved in the manner authorized and directed herein, shall first be paid out of the appropriation made for each of the years of the current biennium in the manner and method herein directed, and said aid, if so granted, shall be first paid out of the appropriations, and allocations herein made to an amount not exceeding one hundred per cent (100%) of the approved grant therefor, and all exceptions to the general law permitting and granting aid to the several school districts of this State shall be paid only if and when those approved applications coming within the general provisions of this Act have first been paid, and such exceptions shall then be allowed and admitted as approved, and upon approval they shall be paid out of such allocations remaining unexpended and then upon a pro rata per capita basis out of the funds remaining unexpended in each of the allocations herein made and not otherwise. . . ."

No citation of authority is necessary to support the proposition that the appropriations made in the above bill are to be controlled and expended under the provisions thereof and not under the terms of the Act of the Forty-fifth Legislature or the applications filed and approved for the year 1938-1939. The Act is clear that a school, to receive any aid for 1939-1940, must properly file its application not later than October 1, 1939, show a budgetary need for the current year and meet the other requirements based upon the current school year. When the applications are re-

ceived in the State Department of Education they are then investigated (Section 12) and none can be approved until they have all been considered (Section 13). The purpose of this investigation is not to determine whether the money has already been properly spent but to serve as a basis for approval or rejection of filed applications, "and no aid shall be given unless it can be shown that all provisions of this Act have been complied with, and that such amount of aid is actually needed." (Section 12). The investigation must be completed by January 15th of each year. Then the initial payment not exceeding fifty per cent (50%) shall be made, i.e., after the investigation is completed. When the investigation is completed the Department is prepared to approve or reject applications. The Legislature having provided that transportation aid shall be paid on the basis of budgetary need "as indicated by approved State Aid Application," and that after the investigation of applications has been completed partial payments may then be made, we think the legislative intent is clear that partial payments are not authorized before the investigations are completed and applications are approved.

The record presented to us does not show that any applications for 1939-1940 have ever been approved and we are informed that the Deputy State Superintendents are now engaged in their investigations.

It has been suggested that Sections 1 and 17, together with the action taken by the Joint Legislative Advisory Committee, may serve as a basis for the proposed action; however, we do not think they are controlling of the issues here presented.

Section 1 makes the appropriation and provides that the money is to:

" . . . be allocated and expended by the State Superintendent of Public Instruction through the Director of Equalization in the State Department of Education and under the supervision and advice of the special Joint Legislative Advisory Committee composed of following members: In addition to other powers and duties they shall have appellate and final jurisdiction on all matters of dispute between said Department of Education and

any applicant for aid under the provisions and terms of this Act, and until otherwise changed and directed all rules and regulations of the State Board of Education shall govern the disposition of all applications for aid under the provisions of this Act; and said Committee shall have no authority to make any grant or aid except that authorized by this Act. . . ."

Section 17 provides:

"The State Auditor's office is hereby directed to audit all applications for aid after same have been passed on by the Director of Equalization and when such application has been approved by said director, it shall then be the duty of the State Auditor to approve, or reject such application. Whenever there is a difference between the State Auditor and the Department of Education, the Joint Legislative Advisory Committee shall adjust same on the request of either department."

In this connection we also note that part of Section 12 which provides:

"It shall be the duty of the State Superintendent of Public Instruction, and he is hereby authorized, to take such action and to make such rules and regulations not inconsistent with the terms of this Act as may be necessary to carry out the provisions and intentions of this Act subject to the approval of the Joint Legislative Advisory Committee created in this Act, and for the best interest of the schools for whose benefit the funds are appropriated. . . . Provided, however, that no regulation of the State Superintendent, State Board of Education or Joint Legislative Advisory Committee shall conflict with any provisions of this Act or any present statute. . . ."

As indicated by the sections of the Act hereinabove discussed it is our opinion that the payment of money out of this appropriation other than upon approved applications would be contrary to and inconsistent with the express provisions of this Act, aside from any question of auditing.

Clearly the provision of Section 1 placing the spending of the money under the "supervision and advice" of the legislative committee does not empower the committee to suspend the provisions of the law and provide a different basis for payment. Likewise we do not think the arising of a "difference" between the State Auditor and Department of Education, assuming a difference as contemplated by Section 17 has arisen, was intended to have the effect of expanding the powers of the Committee to the extent that it might direct action contrary to the express provisions of the statute in adjusting such difference.

It is our opinion that the Comptroller of Public Accounts is not authorized to issue warrants in payment of the claims referred to in your letter of request in their present status.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Cecil C. Cammack
Assistant

CCC:LM

APPROVED DEC 12, 1939

(s) Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
opinion committee
By BWB
chairman