



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

State Commission for the Blind  
State Office Building  
Austin, Texas

Gentlemen:

Attention: Miss Hazel Beckham

Opinion No. O-2070

Re: Authority of the State  
Commission for the Blind  
to enter into contract  
entitled "Central Control  
Plan" as proposed by  
United States Office of  
Education, Department of  
the Interior.

This will acknowledge receipt of your letter of February 29, 1940, requesting the opinion of this Department upon the question of whether or not the State Commission for the Blind may enter into a contract with certain local agencies designated by it in various sections of the state, pursuant to Federal regulations promulgated by the United States Office of Education, Department of the Interior, under Public No. 732 (H. R. 4688), 74th Congress.

We also acknowledge with appreciation receipt of copies of House Bill 844, approved April 25, 1931, creating the State Commission for the Blind, Senate Bill 462, approved June 15, 1939, Appropriations for the State Commission for the Blind for 1940-41, Public No. 732, approved June 29, 1936, and the "Central Control Plan".

A careful examination of Public No. 732, indicates that authority was given to the United States Office of Education of the Department of the Interior to "Designate . . . the State Commission for the Blind in each state . . . to issue licenses to blind persons who are

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citizens of the United States and at least twenty-one years of age for the operating of vending stands in Federal and other buildings in such State for the vending of newspapers, periodicals, confections, tobacco products, and such other articles as may be approved for each building by the custodian thereof, and the State licensing agent . . ." Pursuant to the authority thereby conferred on the Office of Education of the Department of Interior, and according to the terms of the agreement between the two authorities approved December 14, 1936, the State Commission for the Blind was designated as licensing agency for the State of Texas for vending stands for blind people in federal buildings.

We now quote your letter as follows:

"In order to meet the Federal regulation for controlling stands in Federal buildings, the State Commission for the Blind was furnished by the Department of the Interior, Office of Education, what they designate as the Central Control Plan--Rules and Regulations for Procedure in the Administration of the Concession Stand Service by the Texas State Commission for the Blind and the Local Vending Stand Committee, copy of which we enclose for your consideration. The State Commission for the Blind respectfully requests your opinion as to whether or not the State Commission for the Blind has the authority to enter into a contract such as the attached, headed Central Control Plan, with a chosen agency in a territory where vending stands for a blind person might be established in a Federal Building, this agency to act as the administrative arm for the State Commission for the Blind in supervising such vending stands, in making collections of receipts and disbursements for such stands, for furnishing stock for such stands, where the equipment for such stands would be owned by the State Commission for the Blind."

The memorandum headed "Central Control Plan" evidences a contract between the State Commission for the Blind and a chosen local agency for the supervision of vending

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stands for the blind established in federal buildings. This agreement contemplates that the local agency will finance the original stock, construct and install the initial equipment, provide working capital, condition present stands, make collections from such stands, keep an accurate account of all moneys handled by such stands, perform the ministerial duty of paying the blind operators and assistants employed in such stand. The main duty of the State Commission pursuant to authority bestowed upon it by Public No. 732 and rules and regulations promulgated by the United States Commissioner of Education, Department of the Interior, is to determine to whom licenses shall be granted to operate such stands. Being in close touch with hundreds of needy blind, it is to serve as a personnel director in the selection of such blind operators. It will also provide for initial equipment for new stands. May the State Commission so contract?

The State Commission for the Blind is a statutory commission created by the Legislature in 1939 (Acts 1931, 42nd Legislature, p. 122, ch. 80). Sections 2 and 3 of the Article of its creation (Article 3207a, Vernon's Ann. Civ. St.) are pertinent to your inquiry and read as follows:

"Sec. 2. The State Commission for the Blind shall maintain a Bureau of Information, the object of which shall be to aid the blind whose training is not otherwise provided for, in finding employment, in developing home industries among the blind, and in marketing their products. The Commission shall in its discretion furnish materials, tools and books for the use as a means in rehabilitating such persons, and it may establish workshops and salesrooms, and shall have authority to use any receipts or earnings that accrue from the operation of industrial schools, salesrooms or workshops as provided in this Chapter, but detailed statement of receipts or earnings and expenditures shall be made monthly to the Auditor of the State. Through the employment of teachers the Commission may give instruction to adult blind persons in their homes; provided that it shall not undertake the permanent support or maintenance of any blind person. The Commission may also register cases of persons whose eyesight is seriously defective or who are likely to become visually handicapped or blind, and take such measures, in cooperation

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with other authorities, as it may deem advisable for the prevention of blindness or conservation of eyesight, and in appropriate cases, for the education of children and for the vocational guidance of adults having seriously defective sight. The Commission may receive gifts, bequests, or devises from individuals, associations or corporations, and may expend them in accordance with the provisions of this Act." (Undersecoring ours)

"Sec. 3. The State Commission for the Blind may appoint and fix the compensation of an executive secretary and such other workers as may be necessary to make effective the purposes of this Act within the appropriations provided."

Item 5 under the heading "Maintenance and Miscellaneous" provides an appropriation of \$1,500.00 to the State Commission for the Blind for "Operation, Rehabilitation, and Placement, such as, stand equipment, show cases, looms, machinery, yarns, threads, etc., for training purposes."

Underlying each of your inquiries are two major questions, the determination of which must necessarily be made. The first is, has the State Commission for the Blind been given authority by the Legislature to enter into a joint undertaking with a department of the Federal government by the terms of which it will act as licensing agency for the blind operators of stands in federal buildings in this State? An examination of Article 3207a, Vernon's Annotated Civil Statutes, reveals that the Legislature has conferred broad authority and wide discretion upon the Commission for the rehabilitation of the blind. Specifically it has been given authority to (1) aid the blind in finding employment; (2) establish workshops for the blind; (3) furnish materials for such workshops; (4) use the earnings accruing from the operation of such workshops; (5) cooperate with other authorities "for the vocational guidance" of the blind; (6) receive gifts, bequests and devises and expend the same for purposes contemplated by the Act. We hold that under its authority to cooperate with other agencies for the vocational guidance of the blind and its authority to establish workshops for the blind, the Commission has authority to enter into a joint undertaking with the Federal government by the terms of which it will act as licensing agency for blind operators of stands in Federal buildings in this State.

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A second basic and more specific inquiry is whether or not the State Commission for the Blind--granted that it may cooperate to some extent with the federal government in placing blind operators in stands in federal buildings--may contract with local committees in various sections of the state under the "Central Control Plan". We hold that it may.

While at first blush it might appear that a contract with a local committee in the nature of the "Central Control Plan" would constitute an unconstitutional delegation of legislative authority, we do not believe that such is the case. Of course it is axiomatic that legislative authority once delegated cannot be further delegated by the first recipient of the power. Stated more accurately, acts or functions involving official discretion may not be delegated while purely ministerial acts of an officer or board may be delegated to a subordinate or to another. Is that what has actually occurred here?

We are impressed with the fact and after much thought and study the conclusion is inescapable that no lessening of the official power of the Commission has occurred; on the contrary an increase in its jurisdiction has been the result of its negotiations with the Federal government. Prior to those negotiations, it had no jurisdiction or control whatever over stands for blind people in federal buildings. It received that grant of power (pursuant to its statutory authority to "cooperate with other authorities for the vocational guidance" of the blind) conditioned upon its compliance with the reasonable rules and regulations of the United States Office of Education of the Department of the Interior. One such regulation was that the State Commission comply with what is known as the Central Control Plan. In receiving this conditional grant of authority--manifestly for the purpose of providing additional opportunities for the Commission to aid in the rehabilitation and vocational guidance of the needy blind--we find no violation of constitutional guaranties or usurpation of legislative authority. We hold that the State Commission for the Blind may enter into a contract such as the "Central Control Plan" with a chosen local agency for the supervision of stands for the blind in federal buildings.

Your next inquiry centers upon the question of whether or not the State Commission for the Blind may receive from the local agency "a percentage assessment for the

purpose of taking care of depreciation of equipment furnished for such stands by the State Commission for the Blind", and also whether or not the State Commission may receive certain additional funds from local agencies "for the purpose of building a revolving fund for the expansion of a stand program". These funds are provided for under Articles III-A, "Levy for Equipment and Service Costs", and Article III-A-4, "Reserve and Stabilization Fund" which read as follows:

"Art. III. The \_\_\_\_\_ Vending Stand Committee shall collect from each and every stand under the jurisdiction of the Texas Commission for the Blind all moneys derived from the sale of merchandise, and shall apply and account for the moneys thus collected as follows:

A. Levy for Equipment and Service Costs. From the moneys collected, the \_\_\_\_\_ Vending Stand Committee will at the end of each operating month levy and collect from the gross amount collected from each stand a sum equaling, not to exceed, ten per cent of the gross sales of each stand. (The percentage to be levied against any stand over any given period shall be determined quarterly in advance through agreement between the Texas Commission for the Blind and the \_\_\_\_\_ Vending Stand Committee.) The levy for the first three months' period from the beginning of operation shall be six per cent, and no additional or extra levies for equipment and service costs shall be made during such period. The moneys derived from the levy for equipment and service costs shall be apportioned and applied as follows: . . ."

"Article III-A-4. Reserve and Stabilization Fund. After satisfying the requirements for general overhead, amortization, and interest charges, any residue from the 'Levy for Equipment and Service Costs' at the end of each quarter shall be divided equally between the \_\_\_\_\_ Vending Stand Committee and

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the Texas Commission for the Blind. The residus according to the                      Vending Stand Committee shall be credited to the Reserve and Stabilization Fund. The Reserve and Stabilization Fund shall be used primarily for establishing new stands."

The Commission has been given specific statutory authority to "receive gifts, bequests, or devises from individuals, associations or corporations, and may expend them in accordance with the provisions of this act". And we hold that under that authority it may receive these moneys from the local vending stand committee. In this connection, however, we should like to point out that the agreement entitled "Central Control Plan" does not provide for the Commission to provide the initial equipment for the stands nor does it provide for the collection of a percentage assessment by the State Commission of the levy collected by the local agency under Article III-A. We suggest that new agreements be modified to this extent if this is what is desired to be accomplished.

Your final question is, "what procedure should the State Commission for the Blind follow in receiving such funds and in properly recording the same?" We believe that this is a question which is largely within the administrative discretion of the State Commission for the Blind and its Executive Secretary-Director to be determined by correct rules of accounting procedure. The statute (Article 3207a, Vernon's Annotated Civil Statutes) is silent on the subject with the exception that it provides that "a detailed statement of receipts or earnings and expenditures shall be made monthly to the Auditor of the State".

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 9, 1940

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