



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Hazel H. Beckham
Executive Secretary-Director
State Commission for the Blind
Austin, Texas

Dear Madam:

Opinion No. 0-2355
Re: Procedure for State
Commission for the
Blind to follow in
receiving moneys
donated.

This will acknowledge receipt of your letter of May 15, 1940, requesting the opinion of this department upon the following matter:

"I have been advised today by a member of the local Lions Club that District Two-S of the Lions of Texas has mailed to the Austin Lions Club a check for \$50.00, which has not been filled out yet as to who is to receive the check but which, I have been advised, was intended for the State Commission for the Blind to be used for furthering the vending stand program for the blind under the jurisdiction of the State Commission for the Blind. The member of the local Lions Club who advised me of this donation has requested that I be at the Lions Club luncheon tomorrow, May 16, to receive the check.

"Since I am an employee of the State Commission for the Blind and since the State Commission for the Blind has never handled funds not appropriated by the Legislature of the State of Texas, I am requesting an opinion as to whether or not I could receive this check

Honorable Hazel H. Beckham, Page 2

for \$50.00 if it were made out to the State Commission for the Blind.

"I am also requesting your opinion as to how the check should be handled in depositing same with the State of Texas should it be possible for me to receive said check."

As stated to you in Opinion No. 0-2070 the State Commission for the Blind has 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." Article 3207a, Vernon's Annotated Civil Statutes.

In its wisdom the Legislature foresaw that many individuals would desire to offer financial assistance to be used in a program for the rehabilitation of the blind; and that some would see the logic in bestowing the custody of such funds upon an instrumentality actively engaged in such work. To that end the Legislature gave authority to your Commission to serve as trustee for all such grants.

Your question is answered, then, by determining the character of the grant. It is clear that if it is public money it may not be expended except upon a specific appropriation made therefor by the Legislature. Section 6, Article VIII, Constitution of Texas; *McCombs v. Dallas County* (CCA, 1940) 136 S. W. (2d) 975. On the other hand, if the gift constitutes a trust fund, and we hold under the specific facts given, that it does, it may be expended by your Commission as trustee under any lawful conditions imposed by the donor of the grant consistent with the Commission's duties under Art. 3207a, V.A.C.S. Such funds have no place in the State Treasury and Section 6 of Article VIII of the Constitution has no application. Under such circumstances, moreover, reasonable prudence would dictate that all such moneys received be placed in a private bank account.

For your further guidance and protection may we suggest that all such gifts be accompanied by a written memorandum which will designate the character of the funds and the purposes for which they are authorized to be expended by your Commission.

You are therefore respectfully advised and it is the

Honorable Hazel H. Beckham, Page 3

opinion of this department that the State Commission for the Blind may receive a sum of money in the form of a check from a local service organization to be used in the rehabilitation of the blind; and that the check should be made payable to the State Commission for the Blind or to yourself, Executive Secretary-Director, as trustees or trustee.

You are further respectfully advised that the State Commission for the Blind may, if it so desires, deposit all moneys so received in a private bank account established by it and may expend the same in accordance with the provisions of Article 3207a, Vernon's Annotated Civil Statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Walter R. Koch*
Walter R. Koch
Assistant

By *James D. Smullen*
James D. Smullen

JDS:RS

APPROVED MAY 23, 1940

Gerard B. Mann
ATTORNEY GENERAL OF TEXAS

