THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

Honorable J. S. Murchison
Executive Director
State Department of Public Welfare
Austin, Texas

Dear Sir:

Attention: Mr. Garth W. Daniel

Opinion No. O-3379

Re: The payment of higher salaries by the Department of Public Welfare under the conditions described.

We are pleased to comply with your letter of August 18, 1941, requesting a legal opinion from this department upon the question stated by you as follows:

> "The State Department of Public Welfare, in carrying out the provisions of H. B. No. 611, and in following the Social Security Act, has set up a Merit System Plan according to the rules and regulations of the Social Security Board. The Social Security Board's standards for a Merit System include a schedule of payment of salaries to employees based on the responsibilities and duties of each position in the Department. This schedule of salary ranges for each position in the State Department of Public Welfare must be worked out and followed according to the Social Security Board's Regulations controlling the type of Merit System deemed necessary under the Social Security Act in order that the Federal Government may approve the State plan of operation and make grants to the State of Texas for purposes of old age assistance. The Plan has been approved by the Social Security Board.

"Considering the provisions of H. B. No. 611, Acts of the 47th Legislature, Regular Session, and Section 3 (a) of the Social Security Act, as amended by the 76th Congress, directing the Department to provide and maintain a Merit System, and to cooperate with the Federal Government in administering the provisions of the Social Security Act and the rules and regulations issued thereunder, may the State Department of Public Welfare in accordance with a Merit System plan approved by the Federal Social Security Board, pay larger salaries exclusively from Federal administrative funds allocated to the State Department of Public Welfare by the Federal Social Security Board than the itemized salaries contained in the appropriation of State funds for administering old age assistance and provided for in S. B. No. 423, Acts of the 47th Legislature, Regular Session?"

House Bill No. 611, Acts of the 47th Legislature, contains the following provisions regarding the powers and duties of the State Department of Public Welfare:

"Cooperate with the Federal Social Security Board, created under Title 7 of the Social Security Act enacted by the 47th Congress and approved August 14th, 1935, and any amendments thereto, and with any other agency of the Federal Government in any reasonable manner which may be necessary to qualify for Federal Aid for assistance to persons who are entitled to assistance under the provisions of that Act * * *." (Subsection (4), Section 4).

"Have authority to establish by rule and regulation a Merit System for persons employed by the State Department of Public Welfare in the administration of this Act; and shall provide by rule and regulation for the proper operation and maintenance of such Merit System on the basis of efficiency and fitness, and may provide for the continuance in effect of any and all actions heretofore taken in pursuance of the purposes of this subsection * * *." (Subsection (1), Section 4).

"'Sec. 6. The State Department is hereby designated as the State agency to cooperate with the Federal Government in the administration of the provisions of Title I, Title IV, Part 3 of Title V, and Title X, of the Federal Social Security Act and of the provisions of such other titles of the Federal Social Security Act as may be added thereto, from time to time, in the event no other State agency is by law designated to cooperate with the Federal Government in the administration of the provisions of such title, or titles, as may be added to the Social Security Act and the Department is directed to enact and promulgate such rules and regulations as may be necessary to effect the cooperation as herein outlined and designated. The State Department is hereby authorized and directed to cooperate with the proper departments of the Federal Government and with all other departments of the State and local governments in the enforcement and administration of such provisions of the Federal Social Security Act and any amendments thereto and the rules and regulations issued thereunder, and in compliance therewith, in the manner prescribed in this Act or as otherwise provided by law." (Section 4).

In cognizance of these provisions, the 47th Legislature in Senate Bill No. 473, the Departmental Appropriation Bill, enacted the following special rider applicable to the itemized appropriations to the Old Age Assistance Division:

"All incomes allocated or transferred to the Old Age Assistance Fund by H. B. No. 8, Acts of the 47th Legislature, Regular Session or other revenue laws, for the purpose of providing and administering old-age assistance, is hereby appropriated for each of the fiscal years ending August 31, 1942 and August 31, 1943, to the State Department of Public Welfare for old-age assistance payments and for salaries, equipment, supplies, travel, maintenance, and contingent expenses necessary in the extension of said old-age assistance. Provided that in addition to this appropriation out of State funds for administrative expenses for the

> biennium, the State Department of Public Welfare is authorized to accept from the Federal Social Security Board any funds that may be allocated by said Board to the State Department of Public Welfare for administrative expenses, and said Department can use such Federal funds allocated for administrative expenses in addition to funds appropriated for those purposes out of State funds. Provided, that for the administration of the old-age assistance Laws of Texas, the administrative expenses out of State funds for the biennium shall never exceed three per cent (3%) of the total amount expended for assistance out of all funds, State and Federal. In the event that the above total itemized appropriations out of State funds for administration are less than three (3%) per cent of the total amount expended for assistance out of all funds, State and Federal, and a necessity therefor exists, the State Department is authorized to hire additional employees or pay additional necessary maintenance and miscellaneous expenses conditioned upon the State Board of Public Welfare filing a statement of fact with the State Comptroller, the Lieutenant Governor and the Attorney General outlining the conditions creating the emergency making it necessary to use such additional State funds; and provided, in all events the total expenditures out of State funds for administration shall not exceed three (3%) per cent of the total expenditures for assistance out of all funds, State and Federal, and that no additional employees used shall be paid larger salaries than are above fixed for employees rendering similar services and having similar responsibilities." (Underscoring Ours).

This special rider appertaining to the itemized appropriations for the Old Age Assistance Division prevails over the general rider appearing as subsection (b), Section (15), of Section 2 of Senate Bill No. 423, which prohibits the supplementing of appropriations.

The underscored portion of the special rider specifically authorizes the State Department of Public Welfare to accept

Federal funds allocated to the Department for administrative expenses, and to use such funds in addition to, or, in other words, to supplement, funds appropriated for such purposes in Senate Bill No. 423. Salaries constitute administrative expenses, and may be increased from Federal funds allocated to the Department for such purpose.

Your question is therefore respectfully answered in the affirmative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

Zollie C. Steakley
By /s/ Zollie C. Steakley
Assistant

ZCS:RS:mw

APPROVED SEP 10, 1941

/s/ Glenn R. Lewis
Acting ATTORNEY GENERAL OF TEXAS

APPROVED
Opinion
Committee
By B.W.B.
Chairman