



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS**

**Gerald C. Mann**  
~~EDWARD DANFORTH~~  
ATTORNEY GENERAL

Honorable Ben C. Cneal, Chairman  
State Board for Vocational Education  
First National Bank Building  
Wichita Falls, Texas

Dear Sir:

Opinion No. 0-4265  
Re: Amendment to the Texas  
State Plan for Vocational Education and  
Rehabilitation.

We have received your letter of recent date in which you ask several questions regarding a certain proposed amendment to the Texas State Plan for Vocational Education and Rehabilitation for the Five Year Period from July 1, 1937, to June 30, 1942. The Plan provides that the State Superintendent of Public Instruction is the Executive officer of the State Board for Vocational Education "by virtue of his appointment by the State Board for Vocational Education." It is now proposed that the Plan be amended to read that the State Superintendent "is the Executive Officer by virtue of his election, and Director of all Vocational Education by appointment by the State Board for Vocational Education."

Subsection b of Section 1 under "General Direction" now reads as follows:

"b. The State Board for Vocational Education does not contemplate the use of Federal funds in the reimbursement of the Executive Officer's salary. The travel and expenses of the Executive Officer may be paid from George-Dean funds, not to exceed 66-2/3%, when such travel is necessary in the administration of the vocational educational program and is approved by the State Board for Vocational Education. Federal funds expended for all travel of the Executive Officer shall be

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prorated equally among the several services -- namely, Agriculture, Homemaking, and Trades and Industries."

It is now proposed that this subsection be amended to read as follows:

"b. The State Board for Vocational Education shall determine the amount of money that shall be paid out of Federal funds as salary to the Executive Officer, who shall also be the Director. The travel and expenses of this Officer may be paid from George-Deen funds when such travel is necessary in the administration of the vocational education program, and is approved by the State Board for Vocational Education. Federal funds expended for salary and/or travel of said Officer shall be prorated equally among the several services; namely, Agriculture, Homemaking, Trades and Industries, and Distributive Education."

In connection with these proposals you ask the opinion of this department upon the following questions which we quote from your letter:

"First - as to whether or not such amendment can be made by the State Board for Vocational Education? and

"Second - can such amendment be made prior to June 30th, 1942, the expiration date of the five year period as heretofore set up by the said Board as shown in the above mentioned bulletin? and

"Third - (A) If the amendment to the paragraph under Section A (General Direction) on Page 7 of said Bulletin, as proposed by L. A. Woods, reading as follows:

"Executive officer - the State Superintendent of Public Instruction is the Executive Officer by virtue of his election, and director of all vocational education by appointment by the State Board for Vocational Education'

.....

should be made by the said State Board for Vocational Education, then and in that event, would such biennial election of the State Superintendent of Public Instruction automatically make him the Executive Officer of said Board? or

"(B) Would such position of Executive Officer be made by appointment by the Board? and

"(C) In this connection, the Board desires to know whether or not it is compelled to appoint the State Superintendent of Public Instruction as Executive Officer by reason of the fact that he holds such office? or

"(D) Can the Board, if it sees fit, appoint another other than the Superintendent of Public Instruction of the State of Texas as its Executive Officer? and

"(E) With reference to the proposed amendment to subsection (d) under Paragraph I under said Section A (General Direction) reading as follows:

"The State Board for Vocational Education shall determine the amount of money that shall be paid out of Federal funds as salary to the Executive Officer, who shall also be the director. The travel and expenses of this officer may be paid from George-Deen

funds when such travel is necessary in the administration of the vocational program, and is approved by the State Board for Vocational Education. Federal funds expended for salary and/or travel of said officer shall be prorated equally among the several services; namely agriculture, homemaking, trades and industries, and distributive education.'

"Fourth - (A) We desire your opinion as to whether or not under the Smith-Hughes act, George-Deen Act or the George Reed Act, or any Federal Vocational Rehabilitation Act, the Board for Vocational Education can use such money allotted to the State of Texas by the Federal Government from the George Deen Funds to pay this salary to such Executive Officer? and

"(B) Would such salary be permitted under the Constitution and Laws of the State of Texas, inasmuch as the said director is also the State Superintendent for Public Instruction for the State of Texas? and

"(C) Moreover, should the Executive Director be allowed a salary as such and can it be prorated equally among the several services, that is, agriculture, homemaking, trades and industries and distributive education, as enumerated and defined under any Federal Vocational and Rehabilitation Act? and

"Five - Before any such amendment as suggested in the proposal by Mr. L. A. Woods is made, will it be necessary to submit the same to the United States Office of Education for its approval?"

While we do not believe it necessary to go into the Federal acts on vocational education in detail, we do deem it wise to offer a few words of explanation with reference to the Smith-Hughes Act and the George-Deen Act. The Smith-Hughes Act was passed by Congress in 1917 (Public

No. 347, 64th Congress, approved Feb. 23, 1917). This act appropriates certain sums of money, upon conditions therein stated, for the purpose of cooperating with the states which accept the benefits of the act in paying salaries of teachers, supervisors, and directors of agricultural subjects and teachers of trade, home economics, and industrial subjects, and in paying expenses incurred in the training of teachers of such subjects. A federal board of vocational education was created by the act to administer the provisions of the act and to cooperate with the agencies of the various states in the administration of the act. The Legislature of the State of Texas accepted the provisions of the Smith-Hughes Act (See Acts 1917, 35th Leg. 1st C.S.; Ch. 131; Acts 1919, 36th Leg. R.S., Ch. 114; Acts 1923, 38th Leg., R.S. Ch. 131) and designated the State Board of Education as the State Board for Vocational Education. There have been supplementary acts passed by the Congress making appropriations for certain years, which years have now passed. The George-Deen Act (Public No. 675, 74th Congress, approved June 8, 1936, effective July 1, 1937) authorized increased appropriations on a permanent basis to the States and Territories for vocational education both in the fields already aided and also in the field of distributive occupations.

By Executive Order No. 6166, issued on June 10, 1933, the functions of the Federal Board for Vocational Education were transferred to the Department of the Interior, and the Secretary of the Interior assigned such functions to the Commissioner of Education.

We have carefully examined the Congressional acts involved and we have also examined the "Statement of Policies for the Administration of Vocational Education" issued by the Office of Education of the Department of the Interior, 1937 Revised Edition. We feel that the interpretation placed upon the acts by the Department of the Interior is binding upon us since it is that agency which is charged with the administration of the act for the Federal Government and without the sanction of which the State of Texas would receive none of the Federal moneys.

An examination of the Federal statutes inevitably leads one to the conclusion that the State Board for

vocational Education is empowered to employ the persons necessary to carry out the provisions of the act on the part of the State. The Congressional acts do not specify the terms and conditions of such employment. Such matters seem to be left up to the state boards. Therefore, if a state board desires to amend the Plan and provide that the State Superintendent is the Executive Officer by virtue of his election and Director of all Vocational Education by appointment by the Board, we are of the opinion that it has the authority to do so. Whether this amendment must be approved by the Office of Education of the Department of the Interior, we will consider later on in the opinion.

The Plan at present makes provision for the payment of the travel and expenses of the Executive Officer, but it specifically provides that the State Board "does not contemplate the use of Federal funds in the reimbursement of the Executive Officer's salary." In the "Statement of Policies", Question 58 of Part III, there appears the following:

"e. The word 'director' is used to include the Executive Officer of the State board for vocational education. Since the Executive Officer of the State board for vocational education is responsible for the general administration of the program of vocational education, State plans may include provisions for the reimbursement of his salary and necessary travel based on the amount of time which he devotes to the general administration of the vocational education program."

Thus, we see that it is the interpretation of the Federal agency that the State Plan may include provisions for the reimbursement of traveling expenses and salary, but we also see that a definite limitation is placed on the same; namely, that it shall be "based on the amount of time which he devotes to the general administration of the vocational education program."

The State Board is required by Sections 8 and 10 of the Smith-Hughes Act (20 U.S.C.A. § 18, 20) to prepare and submit plans showing how the vocational education work is to be carried out in the State. The plans are now prepared for five year periods. We quote from page 13 of the

"Statement of Policies" as follows:

"During the first few years after the passage of the Smith-Hughes act it seemed desirable that the States propose plans for using the Federal money for one fiscal year only. In this way they were also from year to year to improve their plans and standards to conform to the development of the work and to conditions in the States and communities. The vocational educational program progressed, however, to such an extent that beginning July 1, 1922, States were encouraged to submit plans for approval by the Office of Education for five-year periods."

Appendix C of the "Statement of Policies" sets forth a topical outline for state plans for the five-year period, July 1, 1937, to June 30, 1942. Section A of Topic I (State Administration and Supervision) reads as follows:

- "A. General direction
- 1. Executive officer
  - a. How elected or appointed
  - b. Percentage of salary and travel reimbursed from Federal funds. (p. 40, Par. 2)."

Thus, we see that the Federal board wants to know the manner of selection of the Executive Officer and the percentage of his salary and travel reimbursed from Federal funds. The Executive Officer is responsible in many ways for the effectiveness of the vocational education program. It is, therefore, reasonable for the Federal board to require this information. Also, where the expenditure of Federal funds is concerned, it is certainly reasonable for the Federal board to require information as to the manner of its expenditure. The board would certainly not want the Executive Officer or any other person to be paid an exorbitant salary. It is certainly entitled to this data. It is unreasonable to presume that the Federal board would approve any method of a state board in fixing a salary. Therefore, we believe that the part of the amendment which reads that

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the State Board "shall determine the amount of money that shall be paid out of Federal funds as salary of the Executive Officer" does not go far enough. We are of the opinion that the Plan should show the percentage of time that the Executive Officer spends in vocational education work.

The Plans prepared by the several states are submitted to the Office of Education of the Department of the Interior for approval. If they are approved, then the Office of Education directs that the moneys apportioned to the various states be paid. 20 U.S.C.A. § 18; "Statement of Policies," 1927 Edition, pages 8, 13. There is nothing to indicate that the Plans may not be amended, and we believe that they may be. We do not think that minor changes must be approved by the Federal Office of Education, but we do believe that changes with regard to the selection of the Executive Officer and the payment to him with Federal funds of a salary are not minor changes. Such matters are directly connected with the administration of the vocational education program and the expenditure of Federal funds, and must in our opinion be approved by the Federal Office of Education. In the amendment under consideration, the State Superintendent would still be Executive Officer, but he would be such by virtue of his election as State Superintendent and not by appointment by the State Board. We do not believe that this would be a sufficient change to require Federal approval. But the change with respect to the payment of the salary is a direct reversal of policy and would require such approval.

Since the State Board is responsible for the selection of the Executive Officer, we believe that it may rescind an order providing for his appointment. We can find nothing in the statutes or "Statement of Policies" which would indicate that the State Board is required to appoint the State Superintendent as the Executive Officer. See page 39 of the "Statement of Policies" where the following is stated:

"d. The word 'director' is used to designate the State official directly responsible to the State board for vocational education, though the Executive Officer (who usually is

the chief State school official) for the integration of all fields of vocational education for which Federal funds are used by the State board."

Although the chief state school official is "usually" the Executive Officer, it is our opinion that the State Board is not bound to appoint him. On the other hand, we believe that someone else might be appointed.

We shall now take up that part of the amendment which provides that the State Superintendent shall also be Director of all Vocational Education by appointment of the State Board. Under the present plan, the State Director of Trade and Industrial Education serves as chairman of the council formed by the various state directors, and is responsible to the Executive Officer and the State Board for the general administration and supervision of the vocational program. He is, therefore, serving as State Director. We believe that the "Statement of Policies" contemplates a State Director separate and apart from the Executive Officer. Separate provisions are made for the Executive Officer and for the Director in the Topical Index. The "Statement of Policies" on page 39 thereof reads in part as follows:

"In order to insure adequate direction for the use of such funds the State board should carefully canvass the need of providing in its State plan for the employment of either a State Director of Vocational Education who shall devote his full time to such direction, or of a State Director of Vocational Education employed on a full-time basis in the State Department of Education, who shall devote a portion of his time to the direction of the vocational program. If the salary and necessary travel of such a State director are to be paid from George-Deen funds either in whole or in part, all new appointments, after the adoption of this policy, of persons appointed on a full-time or part-time basis, as indicated in this paragraph, shall meet the minimum qualifications for a State Director as set up in the State plan."

In view of the foregoing, we are of the opinion that the provision of the amendment stating that the State Superintendent shall be Executive Officer by virtue of his election, and "Director of all Vocational Education by appointment by the State Board for Vocational Education" is such a departure from the present plan and from the policies as set forth by the Office of Education of the Department of the Interior that approval of the Office of Education would be required before the amendment could go into effect.

We will now turn to a consideration of whether there is anything in the Constitution or statutes of Texas which would prohibit the payment with Federal funds of a salary to Executive Officer. Article XVI, Section 33, of the Texas Constitution prohibits the drawing or payment of a warrant in favor of any person for salary or compensation as agent, officer, or appointee who at the same time is holding another office of profit, honor, or trust under this State or the United States. Article XVI, Section 40 makes unlawful the holding of more than one civil office or emolument. Would these provisions apply to the situation under consideration? We think not. The State Superintendent in performing the duties of Executive Officer would be merely doing the same type work as he would do anyway. The duties of the State Superintendent, as chief school officer, extend to every field of education in this State, including the vocational field. Thus, additional duties may be imposed upon him as Executive Officer, but this does not mean that he is holding more than one office. We believe that an analogy may be drawn with respect to a county judge as ex officio school superintendent, a county tax assessor-collector as assessor-collector of independent school districts, a county commissioner as ex officio road commissioner, and a sheriff-tax assessor-collector. The state school officials have had the same idea, for the State Superintendent has been Executive Officer for several years, and the receipt of compensation is not necessary for Section 33 of Article XVI to apply. The Legislature has continued to make appropriations for the State Superintendent's salary all during the time that the State Superintendent has been Executive Officer.

Section 1 of House Bill 291 of the 41st Legislature (Acts 1941, 47th Leg., R.S., Ch. 503) reads as follows:

"Section 1. The salaries of all State officers and all State employees, except those Constitutional State officers whose salaries are specifically fixed by the Constitution and except the salaries of the District Judges and other compensation of District Judges shall be, for the period beginning September 1, 1941, and ending August 31, 1943, in such sums or amounts as may be provided for by the Legislature in the general appropriation bills. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of Court fees and receipts, to be paid to the clerks and other employees of the Courts of Civil Appeals, the Supreme Court, and the Court of Criminal Appeals."

Section 2 repeals laws in conflict, and Section 3 declares an emergency.

The appropriation for the salary of the State Superintendent for the present biennium reads as follows:

|   |                 |
|---|-----------------|
| "1. State superintendent (State's part) |                 |
| For the Years Ending                    |                 |
| August 31, 1942                         | August 31, 1943 |
| \$5,000.00                              | \$5,000.00"     |

Section 2, subsection (15)b of the current departmental appropriation bill provides as follows:

"(b) The appropriations herein provided are to be construed as the maximum sums to be appropriated to and for the several purposes named herein, and the amounts are intended to cover, and shall cover the entire cost of the respective items, and the same shall not be supplemented from any other sources; and, except as otherwise provided, no other expenditures shall be made, nor shall any other obligations be incurred by any department of this State, provided, however, that nothing herein shall prevent any department head from paying less than the maximum amount set forth herein for any salaried positions."

We do not feel that these last quoted provisions would in any way prevent the State Superintendent from receiving Federal payment of part of his salary. On the other hand, we believe that the Legislature clearly recognized that such funds could be so used by the inclusion of "State's part" as shown above. The salary rider would prevent payment with State funds of a greater amount as salary than \$5,000.00, but we do not believe that it would prevent the use of Federal funds in the manner indicated.

In view of the foregoing, we answer your questions as follows:

First. We have answered this question in the body of the opinion. It is not susceptible to a categorical answer, and we cannot answer it any more specifically than we have done.

Second. The Plan may be amended during the five year period. However, an amendment which effects a major change must be approved by the U. S. Office of Education. As to the specific amendment under consideration, we have expressed our opinion that certain changes with respect to that part of the amendment providing for the salary payment and that the Executive Officer shall also be State Director must meet with Federal approval.

Third (A) and (B). The answer to these questions are in the affirmative and negative, respectively. However, we have indicated that the Board may rescind an order providing for this form of selection of the Executive Officer.

Third (C) and (D). The State Board is not required by Congressional acts or rulings of the U. S. Office of Education to appoint the State Superintendent as Executive Officer. It may appoint someone other than the State Superintendent if it so desires.

Fourth (A) and (B). Heretofore, we have quoted from the "Statement of Policies", Question 36 of Part III, providing for the reimbursement of the salary and necessary travel of the Executive Officer based on the amount of time which he devotes to the general administration of the vocational education program. The "reimbursement" of his salary

could be construed to mean a reimbursement to the State of an amount representing that percentage of time which the state officer as Executive Officer devotes to the vocational education program. In other words, if the state officer devotes one-fifth of his time to the vocational educational program and he receives a \$5,000 annual salary from the State, then \$1,000 of Federal funds could be paid to the State as reimbursement. It could also be construed to mean a payment to the officer himself in addition to his salary from the state. As to which of these two constructions is to be placed on "reimbursement," we express no opinion. In this connection we are dealing with Federal statutes and rulings upon which our interpretation would in no way be binding. As the approval or disapproval of the U. S. Office of Education would indicate its interpretation upon the salary feature of the amendment, we believe that we should express no opinion thereon, and that this part of the amendment should and must be left entirely to the Federal agency. We do hold, however, that there is nothing in the Constitution or statutes of Texas which would prevent a payment with Federal funds of a salary to the State Superintendent as Executive Officer.

Fourth (C). We answer this question in the affirmative.

Fifth. We have answered this question in the body of the opinion.

We wish to emphasize that the rulings of the U. S. Office of Education ultimately determine its own conduct under Federal statutes and regulations relating to vocational education. For this reason we suggest that all amendments to the State Plan be submitted to the U. S. Office of Education.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED JAN. 27, 1942

/s/ Grover Sellers

FIRST ASSISTANT  
ATTORNEY GENERAL

By /s/ George W. Sparks  
George W. Sparks  
Assistant