



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

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

Overhead by 016570
incorporated

Dear Mr. Murchison:

Opinion No. O-4492

Re: Authority of State Department
of Public Welfare to accept
on behalf of Old Age Assist-
ance Fund gifts, deeds, be-
quests of money, and other
property.

Your letter of April 14, 1942, received, in which
you state:

"A Mrs. Atkins is interested in manufactur-
ing and selling a product to be known as Atkins
Ointment and it is her desire to give a percent-
age of the sale of this product to the Old Age
Assistance Fund.

"Mrs. Atkins also desires to advertise her
product on the basis that a certain percentage of
the sale price would go to the Old Age Assistance
Fund.

"Your consideration and advice on these ques-
tions will be appreciated."

Article II, Sec. 12, Subsection (d) of H. B. No. 8
(being the original Act of the Legislature passed in 1935 by
the 44th Legislature) creating the Old Age Commission, which
is now Article 6243-1, Section 11, Subsection (g) Vernon's
Annotated Revised Statutes, provides that:

"The Commission is authorized to accept
on behalf of the Old Age Assistance Fund any
gifts, deeds, or bequests of any money or other
property, the proceeds of which shall accrue

to the benefit of the Old Age Assistance Fund. In making such gifts or contributions the donor shall attach no conditions whatsoever. The sole management and disposition of the property so received shall be in the Commission."

The Legislature in 1941 by H. B. No. 611, p. 914, General and Special Laws of the 47th Legislature, rewrote in many respects the Public Welfare Act. Section 44 of the Act passed in 1941 reads:

"Article 2 of H. B. No. 3, Acts 44th Legislature, Third Called Session, is hereby repealed."

It thus appears that the Legislature, by repealing the gift clause in the original statute, has adopted the policy of not permitting the Board to receive gifts.

The general policy of the law is that the various boards and agencies appointed by the State can exercise only such powers and prerogatives as the Legislature may bestow. Many of our State boards and agencies are specifically authorized to accept gifts and donations. In *Re Beck's Estate v. Barnard*, 121 Pac. 724, the Supreme Court of Montana held that the State Orphan Home could not, in the absence of authorization by statute, accept a bequest under a will.

Since the Legislature has not given the State Department of Public Welfare authority to accept gifts for and on behalf of the Old Age Assistance Fund, and since it did in 1941 repeal the statute which authorized said Board under certain conditions to accept donations, it is our opinion that the State Department of Public Welfare can not now accept donations.

APPROVED MAY 4, 1942

George W. Barcus

FIRST ASSISTANT
ATTORNEY GENERAL

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

George W. Barcus

Geo. W. Barcus
Assistant

