



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

Dear Mr. Murchison:

Opinion No. 0-5127

Re: Whether or not the Legislature may authorize payment to the State Comptroller and the State Treasurer of expenses incurred in the administration of the Old Age Assistance.

Your request for an opinion from this department upon the above subject matter is as follows:

*House Bill 611, Acts of the Forty-seventh Legislature, Regular Session, Sections 26 and 27 provided the method of making assistance payments to old age assistance recipients. These provisions are as follows:

*SEC. 26. All assistance payments provided for under the terms of this Act shall be paid by vouchers or warrants drawn by the State Comptroller on the proper accounts of a "State Department of Public Welfare Fund"; for the purpose of permitting the State Comptroller to properly draw and issue such vouchers or warrants, the State Department of Public Welfare shall furnish the Comptroller with a list of or roll of those entitled to assistance from time to time, together with the amount to which each recipient is entitled. When such vouchers or warrants have been drawn they shall be delivered to the Executive Director of the State Department of Public Welfare, who in turn shall supervise the delivery of same to the persons entitled thereto.

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"SEC. 27. (1) For the purpose of carrying out the provisions of this Act, the Old Age Assistance Fund, the Blind Assistance Fund, and the Children Assistance Fund as provided for in H. B. 3, Acts of the Forty-seventh Legislature, Regular Session, are hereby made separate accounts of the "State Department of Public Welfare Fund" as created by this Act. Provided, that all monies in the separate accounts of the State Department of Public Welfare Fund shall be expended only for the purposes of carrying out the provisions of this Act, and for the purposes for which said separate accounts were created or appropriated.

"(2) The State Treasurer is hereby designated as the custodian of any and all money which may be received by the State of Texas (which the State Department of Public Welfare is authorized to administer), from any appropriations made by the Congress of the United States, for the purpose of cooperating with the several provisions of the Federal "Social Security Act," and all money received from any other source; and the State Treasurer is hereby authorized to receive such money, pay it into the proper fund or the proper account of the General Fund of the State Treasury, provide for the proper custody thereof, and to make disbursements therefrom upon the order of the State Department and upon warrant of the State Comptroller of Public Accounts."

"House Bill 3, Acts of the Forty-seventh Legislature, regular session, as amended, provided in Art. XI, Section 2, Sub-section 4, the amount of State fund which shall be allocated and transferred to the old age assistance fund. In Senate Bill 423, Acts of the Forty-seventh Legislature, Regular Session, a sum is appropriated out of the old age assistance fund for the use of the State Treasurer, and there is also a sum appropriated out of the old age assistance fund for the use of the State Comptroller. (See General and Special Laws, pages 1139, 1282 and 1283).

"The appropriations as provided in Senate Bill 423 have been used by the State Comptroller and the State Treasurer in paying the expenses of handling the old age assistance checks. A sub-committee of the Senate Civil Jurisprudence Committee is studying the financial provisions relating to the old age assistance program, and this Senate Sub-committee has instructed us to submit for your consideration the following question:"

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Upon this statement you propound the following question:

"Is there Legislative authorization for appropriating funds from the old age assistance fund to pay expenses incurred by the State Comptroller or State Treasurer in connection with the handling of old age assistance checks or maintaining accounting records?"

Provision for old age assistance is clearly within the legislative prerogative, and is a proper exercise of the police power of the State for the general welfare. Such legislation necessarily contemplates the incidence of expenses for the administration of such Act.

Section 48 of Article III of the Constitution, limiting the power of the Legislature in the matter of the right to levy taxes or impose burdens upon the people, expressly excepts from the prohibition or limitation the right and power "to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes: * * * * The payment of all officers, agents and employees of the State government, and all incidental expenses connected therewith." The authority to tax and collect necessarily includes the power to appropriate -- that is, to apply the fund to its proper purpose.

S. B. 423, Acts of the 47th Legislature, Regular Session, as stated by you, appropriated out of the Old Age Assistance Fund certain amounts for the use of the State Comptroller and the State Treasurer in connection with the administration of the Act. (See General and Special Laws, 47th Legislature, pp. 1139, 1282 and 1283). These items were in payment of "officers, agents and employees of the State government" for services actually rendered in the administration of the Act, and as such they are constitutionally valid.

APPROVED MAR 19, 1943
[Signature]

ATTORNEY GENERAL
OS-ER

Very truly yours
ATTORNEY GENERAL OF TEXAS

By *[Signature]*
Ocie Speer
Assistant

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