



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WELLS WILSON~~
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-5407
Re: Repeal of House Bill No. 159,
48th Legislature, by House Bill
No. 9, 48th Legislature.

Your letter of June 14, 1943, submits the following questions for the consideration of this Department:

"1. Does H.B. No. 9 repeal H.B. No. 159 in whole, or if in part, to what extent?

"2. Should the Comptroller, in making the next monthly allocation of money from the Clearance Fund into the Old Age Assistance Fund take into consideration the \$1,154,044.20 now in the Old Age Assistance Fund thereby making it a part of the \$1,900,000.00 for the month of July?

"3. If you answer question two in the negative, then should the Comptroller apply 1/24th of the balance each succeeding month in establishing in the Old Age Assistance Fund the \$1,900,000.00?"

H. B. No. 159 passed by the 48th Legislature reads as follows:

"All unexpended and unappropriated balances on hand in the Old Age Assistance Fund are hereby appropriated to the State Department of Public Welfare for the purposes for which said fund is authorized by law to be expended. Providing that not more than one-twenty-fourth (1/24) of the unexpended and unappropriated balances on hand in the Old Age Assistance Fund shall be expended during any one calendar month."

The 48th Legislature likewise passed H. B. No. 9. It carried the emergency clause, and received the vote necessary to make it effective as an emergency measure. It was passed after H.B. 179.

Section 1 of H. B. No. 9 provides:

"Subsection 4, Section 2, Article XX, of H. B. No. 8, Chap. 184, Acts of the 47th Legislature, State of Texas, Regular Session, and all subsequent amendments thereto, is hereby amended so as to hereafter read as follows:

"(4) After the above allocations and payments have been made from such Clearance Fund there shall be paid therefrom into the Old Age Assistance Fund on the first of each month such sum which, taken with the unexpended balance of State funds in such Old Age Assistance Fund, will establish in the Old Age Assistance Fund a total of \$1,900,00.00 in State funds for that month. No more than \$1,900,000.00 in State funds from whatever source may be expended for Old Age Assistance in any calendar month. If, on the first day of the calendar month, the unexpended balance in the Old Age Assistance Fund plus the amount on that date transferred from the Clearance Fund to the Old Age Assistance Fund, shall not establish in the Old Age Assistance Fund the total sum of \$1,900,000.00 in State funds for that month, then, in that event, there shall be deposited to the credit of the Old Age Assistance Fund from the revenues collected after the first day of the month which would otherwise go into the General Revenue Fund such sum as, with the balance on hand in the fund plus the payment from the Clearance Fund, will make available in the Old Age Assistance Fund a total amount of State funds for that month of \$1,900,000.00. The funds now on hand in, or hereafter deposited to the credit of, the Old Age Assistance Fund, are hereby appropriated for the uses and purposes prescribed by law, subject, however, to the provisions of this Act. This appropriation is for the remainder of the fiscal year ending August 31, 1943. The \$1,900,000.00 per month State funds herein appropriated shall be and is in lieu of all other State appropriations for Old Age Assistance, and this State appropriation of \$1,900,000.00 shall not include any funds received from the Federal Government."

Section 2 of H. B. 9 repeals all laws in conflict with H. B. 9 to the extent of the conflict only.

Since H. B. 9 appropriates, for the remainder of the

fiscal year ending August 31, 1943, subject to its provisions, "the funds now on hand in, or hereafter deposited to the credit of, the Old Age Assistance Fund", it is directly in conflict with H. B. No. 159, the earlier law. For the period from the effective date of H. B. No. 9 to August 31, 1943, therefore, the appropriation provided by H. B. No. 9 controls. From and after September 1, 1943, H. B. 159 is suspended by the appropriation made by the rider to the itemized appropriation made for the Department of Public Welfare by S. B. 332, 48th Legislature.

Answering your second question, you are advised that, perforce of the provisions of H. B. 9, you must take into consideration, in making the next monthly allocation of money from the Clearance Fund into the Old Age Assistance Fund, any "unexpended balance of State funds" in the Old Age Assistance Fund. Since the \$1,154,044.20 item to which you refer as being in the Old Age Assistance Fund is an unexpended balance in that Fund, you must treat it as such in making your transfer of funds from the Clearance Fund to the Old Age Assistance Fund.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/R. W. Fairchild
R. W. Fairchild
Assistant

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APPROVED JUN 28, 1943
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman