



**THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS**

**PRICE DANIEL
ATTORNEY GENERAL**

August 26, 1948

Hon. George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-671

Re: Authority of the Comptroller to pay traveling expenses of the employees of the Division of Eleemosynary Institutions from the revolving funds created by S. B. No. 374, Acts 50th Leg., p. 612.

Dear Sir:

Your request for an opinion reads:

"S. B. 391, Acts of the Regular Session of the 50th Legislature, known as the General Departmental Appropriation Bill, sets out under the Division of Eleemosynary Institutions in the section of the Appropriation Bill to the State Board of Control a number of salaries and other listed items.

"Under Subsection b of Subsection (14), the General Rider Provisions of the Departmental Appropriation, is found this language:

"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; provided, however, that the provisions and restrictions herein shall not apply to the State Commission for the Blind; 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 position."

"Under the heading 'Revolving Fund and Institutional Receipts' found in the Rider Provisions to

S. B. 374, Acts of the Regular Session of the 50th Legislature, and known as the Appropriation Bill for Eleemosynary and Reformatory Institutions, is found this language:

“(b) Upon the approval of the Board of Control, said institutions may make just and properly due refunds of any advance payments made on behalf of pay-inmates out of the pay-inmate receipts or funds; and the Board of Control is allowed, and there are hereby appropriated out of said funds not exceeding One Thousand (\$1,000.00) Dollars per year for traveling expenses to be used by the Board of Control in connection with the collection of pay-inmate charges and institutional supervision. Refunds to patients for unused advance payments may also be made out of cash revolving funds if directed by the Board of Control. There is also appropriated to the State Board of Control out of any institutional receipts or funds such amounts as may be necessary for traveling expenses and for other necessary help of the Division of Eleemosynary Institutions; provided the amounts paid for such services shall not exceed the remuneration fixed for similar services.’ (Emphasis supplied.)

“Can the State Board of Control use the money appropriated by the language taken from S. B. 374, supra, for the payment of traveling expenses incurred by the employees listed under the Division of Eleemosynary Institutions in the General Departmental Bill above mentioned?”

The Division of Eleemosynary Institutions of the State Board of Control was created by statute. Articles 690-695, R.-C. S. These Articles prescribe certain powers and duties of the Board with reference to such institutions. They confer upon the Board the power to control and the duty of supervising all such institutions and to maintain an effective inspection of each such institution, for which purpose a representative of the Board must visit each institution once every month, and each member of the Board must visit each institution at least once a year. In the performance of these and other duties not mentioned here, travel expense is necessarily incurred.

Appropriations for the Board are found in the Departmental Appropriation Bill (S. B. 391, Acts 50th Leg., p. 830-834)

and includes Items 1 through 92. The appropriations for the Division of Eleemosynary Institutions include Items 74 through 81 and are to pay the salaries of the eight employees whose positions are therein designated and whose duties pertain to Eleemosynary Institutions. Item 92 is an appropriation for many miscellaneous purposes, including travel expense for the Board of Control as a whole, including the Division of Eleemosynary Institutions.

The Appropriation Bill for Eleemosynary and Reformatory Institutions carries a rider entitled "Revolving Fund and Institutional Receipts." (Acts 50th Leg., p. 612). This rider contains only Sections (a) and (b). You have quoted Section (b) in your request. The pertinent part of Section (a) reads:

"No property belonging to any institutions shall be sold or disposed of without the consent of the Board of Control; and all proceeds from the sale of any such property, from labor performed, from the sale of crops and pay-inmate receipts, shall become and are hereby appropriated as a maintenance fund to be expended under the direction and upon the approval of the State Board of Control. The State Board of Control is hereby authorized to use out of the proceeds of said receipts and funds such amounts as they shall deem necessary for support and maintenance of said institution. . . ."

The receipts of an eleemosynary institution from the four sources named in Section (a) have been appropriated for one or more of the purposes mentioned in Sections (a) and (b). Section (b), insofar as we are here concerned, provides:

(1) "Upon approval of the Board of Control, said institution may make just and properly due refunds of any advance payments on behalf of pay-inmates, out of the pay-inmate receipts or funds;

(2) "And the Board of Control is allowed and there are hereby appropriated out of said funds not exceeding One Thousand (\$1,000) Dollars per year for traveling expenses to be used by the Board of Control in connection with the collection of pay-inmate charges and institutional supervision.

(3) "There is also appropriated to the State Board of Control out of any institutional receipts

or funds such amounts as may be necessary for traveling expenses and for other necessary help of the Division of Eleemosynary Institutions; provided the amounts paid for such service shall not exceed the remuneration fixed for similar services." (Emphasis added)

The appropriation for travel expense provided for in Item 92 is to pay such expense when incurred by a member of the Board or any employee of the Board when traveling on any kind of business for the Board. In other words, that appropriation is not limited to expenses incurred in the performance of any special duty, or by any particular officer or employee of the Board. On the other hand, the two appropriations for traveling expenses contained in Section (b) are made from special funds and for special purposes of travel. The appropriation in an amount of not more than \$1,000 per year is payable only from "pay-inmate receipts or funds" and then only when such expenses are incurred in connection with the collection of pay-inmate charges and/or institutional supervision. The appropriation to pay traveling expenses of the Division of Eleemosynary Institutions is payable "out of any institutional receipts or funds" with the limitation above stated that in no event shall the expenditure of "pay-inmate receipts or funds" exceed \$1,000 for collection of charges and institutional supervision. Therefore, the two appropriations for travel expenses in Section (b) are clearly available to the Board of Control for the purposes stated unless they have been nullified by the rider in the Departmental Appropriation Bill, cited in your request.

These two bills were enacted by the same Legislature and each became operative at the same time, September 1, 1947. The Departmental Bill was finally passed only three days after the Eleemosynary Bill was so passed. Each bill made appropriations to pay traveling expenses incurred by members and employees of the Board of Control. To this extent, the two bills are in pari materia and must be read and considered together for the purpose of ascertaining the intent of the Legislature with reference thereto. Any conflict between them should be harmonized, if possible, and effect given to all provisions of each bill, so that no absurd conclusion will be reached. It cannot be presumed the Legislature intended to do a useless thing by adding the two appropriation provisions in Section (b). When these bills are so considered, we believe the Legislature intended the limitations imposed by Subsection (b) of Subsection 14, a rider in the Departmental Appropriation Bill, to apply only to the appropriations in the bill to which it is attached. Such construction harmonizes and gives full effect to the provisions of both bills.

SUMMARY

Traveling expenses of members of the State Board of Control and the employees of the Board, incurred in connection with the collection of pay-inmate charges and institutional supervision, may be paid out of pay-inmate receipts or funds to the extent of \$1,000 as provided in the current Eleemosynary Appropriation Bill, Acts 50th Leg., p. 613.

Traveling expenses incurred by employees of the Division of Eleemosynary Institutions of the State Board of Control in the performance of some duty pertaining to eleemosynary institutions, may be paid out of any institutional receipts or funds, subject to the above limitation as to use of pay-patient receipts.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

Bruce W. Bryant

By

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APPROVED:

Price Daniel
ATTORNEY GENERAL