



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

August 17, 1951

Hon. Larry O. Cox  
Executive Director  
Board for Texas State Hospitals  
and Special Schools  
Austin, Texas

Opinion No. V-1240

Re: Necessity for advance quar-  
terly budget approval by the  
Legislative Budget Board  
prior to expenditures from  
the State Hospitals and Special  
Schools Building Fund.

Dear Sir:

Your request for an opinion reads, in part, as follows:

" . . . it has become necessary to request the opinion of your Department as to whether or not this Board is required by law to obtain quarterly budget approval from the Legislative Budget Board prior to obligating or expending any of those funds credited to the State Hospitals and Special Schools Building Fund and appropriated to this Board by the provisions of Section 26, Article II, House Bill No. 426, Regular Session, Fifty-second Legislature.

"These provisions read in part as follows:

"Sec. 26. (a) There is hereby appropriated to the Board for Texas State Hospitals and Special Schools Five Million Dollars (\$5,000,000) for each fiscal year of the biennium ending August 31, 1953. Such funds are to be credited to the State Hospitals and Special Schools Building Fund which is the same hospital building fund as provided for in House Bill No. 2, First Called Session, Fifty-first Legislature.

" . . .

" '(b) All funds credited to the State Hospitals and Special Schools Building Fund under this Article are hereby appropriated to the Board for Texas State Hospitals and Special Schools for the purpose of architectural and engineering plans, constructing, repairing, and equipping such buildings as in the opinion of the Board are necessary to the proper care of those committed or to be committed to such hospitals and special schools according to law. Provided, however, the fees paid to an architect shall not exceed six per cent (6%) for the plans, specifications and supervision of construction of said buildings and all construction contracts made for, and the final acceptance in connection with such construction, other than the plans and specifications, shall be subject to the review and approval of the Board of Control. The Board may contract for, and pay for plans and specifications for any contemplated construction, even though the contract for such plans and specifications may be made in one (1) year and the contract for construction is entered into the following year.'

" . . .

"Section 14, Article II, House Bill No. 426, Regular Session, Fifty-second Legislature, is entitled 'Quarterly Budgets' and provides that:

" 'The Legislative Budget Board shall require quarterly budget approval prior to the obligation or expenditure of any of the funds appropriated to the Board institutions and the Central Office in this Article. No moneys herein appropriated shall be expended until such budget approval shall have been secured.' [Emphasis added.]

"It is the opinion of this Board that the provisions of Section 26 of this Article are in no way affected by the budgetary requirements set forth in Section 14 of the Article in that Section 14 relates to ordinary operating expenditures of the central office and the several institutions under the Board's control and management, and not to construction expenditures to be made by the Board itself out of the State Hospitals and Special Schools Building Fund. Restated, it is the Board's

opinion that these latter expenditures are to be governed solely by the provisions of Section 26 of Article II."

Section 1, Article II of House Bill No. 426 contains specific appropriations for the support and maintenance of each hospital and special school named therein and the Central Office of the Board for Texas State Hospitals and Special Schools for each fiscal year of the biennium beginning September 1, 1951. No part of any of these appropriations is payable out of the appropriations to the Board contained in Section 26 of Article II.

Section 14 of Article II reads as follows:

"The Legislative Budget Board shall require quarterly budget approval prior to the obligation or expenditure of any of the funds appropriated to the Board institutions and the Central Office in this Article. No moneys herein appropriated shall be expended until such budget approval shall have been secured."

Section 26 of Article II contains an appropriation to the Board for Texas State Hospitals and Special Schools of \$5,000,000 out of the State Hospitals and Special Schools Building Fund created by the Legislature in 1950 (H.B. 2, Acts 51st Leg., 1st C.S., ch. 1, p.1) for each fiscal year of the biennium beginning September 1, 1951 "for the purpose of architectural and engineering plans, constructing, repairing, and equipping such buildings as in the opinion of the Board are necessary to the proper care of those committed or to be committed to such hospitals and special schools according to law."

Subsection (c) of Section 26 of Article II reads as follows:

"It is hereby declared the intent and policy of the Fifty-second Legislature that the Board shall use such moneys from the State Hospitals and Special Schools Building Fund as may be required to repair and rehabilitate existing buildings and facilities."

Subsection (f) of Section 10 of Article II provides:

"The Board is authorized to employ such additional laborers, skilled laborers, and mechanics as may be necessary to carry out such major repair and rehabilitation projects which may be financed from moneys of the State Hospitals and Spe-

cial Schools Building Fund, in accordance with the provisions of Section 26 (c) of this Article. Salaries for such employees shall not exceed the prevailing wage scale in the locality where the work is done."

We have found no other provisions in Article II which pertain to your question. It is from this Article, the above mentioned provisions thereof, and the Act creating the Building Fund that we must determine whether the Legislature intended for the provisions of Section 14 to apply to the appropriations to the Board contained in Section 26.

The Legislative Budget Board was created in 1949. Acts 51st Leg., R.S., ch. 487, p. 908. The act creating the State Hospitals and Special Schools Building Fund was passed in 1950. Acts 51st Leg., 1st C.S., ch. 1, p. 1. This Act increased the taxes on cigarettes until August 31, 1957, and provided that a certain per cent of the net revenue derived from each of the two classes of cigarettes defined therein shall be credited to the Building Fund. It also provided that an amount not to exceed \$5,000,000 shall be credited to such fund for the biennium ending August 31, 1951, and an amount not to exceed \$5,000,000 shall be deposited to the credit of such fund for each fiscal year thereafter.

The Act contained an appropriation to the Board which read as follows:

"All funds credited to the State Hospitals and Special Schools Building Fund under this Act are hereby appropriated to the Board for Texas State Hospitals and Special Schools for the purpose of constructing, repairing and equipping such buildings as in the opinion of the Board are necessary to the proper care of those committed or to be committed to such hospitals and special schools according to law. Provided, however, the fees paid to an architect shall not exceed six per cent (6%) for the plans, specifications and supervisions of said buildings and all contracts made for and the final acceptance in connection with such construction other than the plans and specifications, shall be subject to the review and approval of the Board of Control."

The Act did not further restrict or restrain the Board

in the expenditure of the appropriations for constructing, repairing, and equipping such buildings as in its opinion are necessary for the proper care of inmates. It contains no reference whatever to the Legislative Budget Board, which had been previously created.

There is no material difference in the language found in that appropriation and the language used by the Legislature in Section 26 of Article II to make the appropriations contained therein to the Board.

The only appropriations contained in Section 1 of Article II are "to the Board institutions and the Central Office" of the Board. The requirement of quarterly budget approval prior to the obligation or expenditures of any of the funds appropriated to such institutions or Central Office by the Legislative Budget Board as provided in the first sentence of Section 14 is applicable only to such appropriations. Since the money appropriated in Section 26 is to the Board and not to any particular institution or institutions, it necessarily follows that such appropriations do not come within the purview of Section 14, unless the concluding sentence in that Section is applicable to them. That sentence reads as follows:

"No moneys herein appropriated shall be expended until such budget approval shall have been obtained."

This sentence must be read and considered with the sentence which precedes it. In other words, all the provisions of Section 14 must be read and considered together for the purpose of ascertaining the legislative intent. When so read and considered in connection with all other pertinent facts and circumstances heretofore noted, we have concluded that the Legislature intended for this sentence to apply only to the appropriations contained in Section 1 of Article II "to the Board institutions and Central Office" specifically mentioned in the first sentence of Section 14.

Consequently, you are advised that we concur in the opinion of your Board that the provisions of Section 14, Article II of House Bill No. 426, Acts 52nd Leg., 1951, do not apply to the appropriations to the Board for Texas State Hospitals and Special Schools contained in Section 26 of Article II. In answering this question we have not passed upon or considered the

constitutionality of Section 14, Article II of House Bill No. 426,  
supra.

SUMMARY

The provisions of Section 14, Article II of House Bill No. 426, Acts 52nd Leg., R.S., 1951, do not apply to the appropriations to the Board for Texas State Hospitals and Special Schools contained in Section 26 of Article II of House Bill No. 426 for the purpose of constructing and repairing buildings.

APPROVED:

C. K. Richards  
Trial & Appellate Division

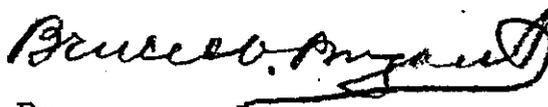
Everett Hutchinson  
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Yours very truly,

PRICE DANIEL  
Attorney General



By

Bruce W. Bryant  
Assistant