



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

December 19, 1952

Hon. R. C. Lanning, Chairman  
State Board of Control  
Austin, Texas

Opinion No. V-1557

Re: Necessity for approval  
by the Board of Control  
on vouchers covering re-  
imbursement of the grocery  
purchases of certain per-  
sonnel of the Board for  
Texas State Hospitals and  
Special Schools.

Dear Sir:

Your request for our opinion reads in main as follows:

"We desire the opinion of your office as to the duty and responsibility of the Board of Control to approve for payment vouchers covering reimbursement to certain officials of Institutions under the jurisdiction of the Board for Texas State Hospitals and Special Schools for groceries Purchased for personal use.

"On November 12, 1952, the Board for Texas State Hospitals and Special Schools submitted to the Board of Control such a voucher in the amount of \$50.00 payable to John L. Dietrich, Business Manager of the Moody State School for Cerebral Palsied Children. The voucher covered reimbursement out of Appropriation No. R-719 to Mr. Dietrich for groceries he purchased for his own personal use during October, 1952. The voucher was forwarded without Board of Control approval to the Comptroller of Public Accounts for issuance of a State warrant. On November 14, 1952, the voucher was returned to the Board of Control by the Comptroller with this notation, 'Approval by the Board of Control.'

"The Board of Control feels that a transaction of this kind is not in any sense a purchase for a State Institution or Agency and thus our approval is not required on any resulting claim before a warrant can be issued by the Comptroller.

"The authority and procedure for such a transaction is set up by rules adopted by the Board for Texas State Hospitals and Special Schools, a copy of which we are enclosing, and we are unable to see how the Board of Control is involved.

"The State Comptroller feels that since we have approved all similar claims in the past, we should continue to do so before a State warrant is issued. We believe the practice is only a carry over from the time when the Board of Control operated the State Institutions and the auditing and approval of such claims was a part of the Hospital and School administrative function rather than a part of the purchase function."

Ordinarily, the purchase of all kinds of supplies for the various state agencies and institutions is the function of the Board of Control under the provisions of Article 634. This article has been construed by a number of Attorney General's Opinions, including V-677 (1948), O-3885 (1941), O-2612 (1940), and O-2595-A (1940).

The Board for Texas State Hospitals and Special Schools was created in 1949 by the 51st Legislature under the provisions of Article 3174b, V.C.S., and all powers and duties heretofore vested in and exercised by the State Board of Control over our state eleemosynary institutions was transferred to the newly created Board. Att'y Gen. Op. V-905 (1949). However, Section 2 of this act reads:

"Provided, however, that the Board of Control shall continue to handle purchases for such institutions in the same manner as they do for other State agencies."

There is no authority provided in the above act for the purchase of groceries by individual

employees of said institutions and reimbursements to them by the State. For that authority it is necessary to turn to the provisions of the current biennial appropriation bill (H. B. 426, Acts 52nd Leg., R.S. 1951, ch. 499, p. 1228) which reads in part, at page 1292:

"Sec. 5. Emoluments of Employees: (a) Under written direction of the Board and/or Council, subject to the approval of the Legislative Budget Board, institutional employees may receive such emoluments as the Board and/or Council may by rule and regulation prescribe. Prior to granting or allowing such emoluments to any medical or supervisory personnel, which will require new or additional remodeling or construction, approval must be obtained in writing from the Legislative Budget Board. A copy of such approval, when obtained, shall be filed with the Comptroller of Public Accounts and no expenditure of any funds herein appropriated or any local or other available funds shall be made without prior approval.

"(b) To prevent inequalities in salaries to those employees not receiving any or all of such emoluments, it is provided that the Superintendent, upon written approval of the Board and/or Council shall pay such employees an amount not to exceed Fifty Dollars (\$50) per month each as an outside maintenance allowance. It is specifically required, however, that no employee receiving an additional allowance as provided herein may receive any emoluments at any institution unless he reimburses said institution for such emoluments at rates prescribed by rules and regulations of the Board and/or Council, subject to the approval of the Legislative Budget Board. Any such reimbursements are hereby appropriated only to the food appropriation for each institution. It is further specifically required that the Board and/or Council shall specify those employees who shall receive full emoluments and those who shall receive the additional monetary allowance.

"(c) Emoluments may be granted to the Medical Director and Assistant Medical Director of the Board but for no other employee of the Board's Central Office."

It is our opinion that the transactions in question are not those regulated by Article 634, V.C.S. They are not purchases by the State, but are individual purchases, the reimbursements for which are specifically authorized as emoluments under House Bill 426. There is no provision made for the Board of Control to approve or act in any way upon such allowances. Approval by the Board for Texas State Hospitals and Special Schools of vouchers covering reimbursement for grocery purchases by designated personnel is all that is necessary and required before the application is made to the Comptroller for issuance of a state warrant. We do notice, however, that the Hospital Board rules you enclosed are merely some committee recommendations and do not bear any certificate of adoption by the Hospital Board; but we have been advised that proper rules have been adopted.

SUMMARY

It is not necessary for the Board of Control to approve vouchers covering reimbursement of the grocery purchases by certain personnel of the Board for Texas State Hospitals and Special Schools. These purchases are emoluments under the provisions of the current biennial appropriation bill and approval by the Hospital Board is sufficient.

Yours very truly,

APPROVED:

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