



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

June 30, 1954

Hon. John H. Winters
Executive Director
State Department of
Public Welfare
Austin, Texas

Letter Opinion No. MS-141

Re: Interpretation of S. B. No. 2, Ch. 6, Acts 53rd Leg., 1st C.S., in relation to Commodity Distribution Division of the State Department of Public Welfare.

Dear Mr. Winters:

You have requested an opinion on whether the employees of the Commodity Distribution Division of the State Department of Public Welfare may be legally granted the increase of \$10.00 per month beginning September 1, 1954, which was provided for state employees in Senate Bill No. 2, Chapter 6, Acts of the 53rd Legislature, First Called Session, 1954.

Subject to certain exceptions not here relevant, Chapter 6 authorizes an increase of \$10.00 per month, during the fiscal year beginning September 1, 1954, for each position authorized in Articles I, II, III, and V of Chapter 81, Acts of the 53rd Legislature, Regular Session, 1953 (General Appropriation Act). This act was passed by both houses of the Legislature on April 13, 1953, and was approved by the Governor on April 29, 1953.

The Commodity Distribution Division of the Department of Public Welfare was created by House Bill No. 441, Chapter 305, Acts of the 53rd Legislature, Regular Session. The House passed this bill on May 4, 1953, after the General Appropriation Act had been finally passed and approved. The operations of the Division are carried on through a central office and a number of distribution districts, and are financed out of assessments against recipients of commodities. From these assessments Chapter 305 appropriates such amounts as are necessary for operating expenses of the districts. Att'y Gen. Op. MS-99 (1953). The Department of Public Welfare may employ necessary district personnel and may fix the amount of their salaries. Section 2 of Chapter 305 appropriates specific amounts out of the funds raised by the assessments for the salaries of the personnel in the central office.

Since the Legislature had already appropriated such amounts as were necessary to operate the district offices and

since the Department has authority to fix district personnel salaries at reasonable amounts, we think there is no question of the authority of the Department to increase the salaries of the district personnel to make them harmonize with the increased salaries paid other State employees for similar positions. Such a raise would be consonant with legislative policy, expressed in Section 5(f), Article VI of the current General Appropriation Act.

Section 2 of Chapter 305 places a limitation on the salaries which may be paid to employees in the central office of the Division. The question is whether Chapter 6, which by its terms refers only to positions authorized in the General Appropriation Act, operates to increase the salaries authorized in Chapter 305.

In construing a statute, the intent of the Legislature is the controlling consideration. Once that intent becomes clear, it should be given effect even though the literal terms of the statute seem to convey a different meaning. Stone v. Hill, 72 Tex. 540, 10 S.W. 665 (1889); Storrie v. Houston City Street Ry. Co., 92 Tex. 129, 46 S.W. 796 (1898); City of Mason v. West Texas Utilities Co., 750 Tex. 18, 237 S.W.2d 273 (1951). "In arriving at the intent and purpose of the law, it is proper to consider the history of the subject matter involved, the end to be attained, the mischief to be remedied, and the purposes to be accomplished." Magnolia Petroleum Co. v. Walker, 125 Tex. 430, 83 S.W.2d 929 (1935).

The pay raise provided in Chapter 6 is a cost-of-living raise. This is borne out by the emergency clause as well as by the fact that the raise is a blanket raise, applying generally to positions carrying yearly salaries of less than \$10,000, regardless of the type of work performed or the merit of individual employees. No reason can be perceived why the Legislature would intentionally exclude a group of employees whose salaries were fixed contemporaneously with those of other employees and whose employment involves no distinguishing characteristics. The purpose of the statute was to make a cost-of-living adjustment in salaries, and the reasonable assumption would be that all employees affected by the rising cost of living would be treated alike.

It is the established practice for the Legislature to make the regular biennial appropriations for operation of all executive and administrative departments of the state government in one general appropriation act. (In 1951 and 1953 the regular biennial appropriations for all branches of the government were combined into one act, the executive and administrative departments being grouped together in Article III of each of the acts.)

The various divisions of the Department of Public Welfare are regularly included in these general acts. It cannot be doubted that the Commodity Distribution Division would also have been included in the General Appropriation Act for the current biennium if it had been established at some time prior to the 1953 session of the Legislature instead of having been created after the 1953 Appropriation Act had already been passed. Nor can it be disputed that the General Appropriation Act is usually thought of as embracing appropriations for all of the permanent state departments and agencies which are financed through biennial appropriations. Justification for this habit of thought is found in the fact that exceptions are rare -- in fact, the Commodity Distribution Division is the only state agency having permanent employees paid salaries out of state appropriations which is not included in the 1953 General Appropriation Act.

It is our opinion that the Legislature, in using the designation of "each position authorized in Article III of Chapter 81," intended to use language descriptive of all positions in those executive and administrative departments of the state government which are normally included in the General Departmental Appropriation Act. Inadvertence or inappropriateness in the choice of language will not thwart this intent. Russell v. Farquhar, 55 Tex. 355 (1881).

As we have pointed out, the appropriation for the Commodity Distribution Division normally would be included along with the other divisions of the Department of Public Welfare. The only reason for its not being included in Article III of Chapter 81 was that it had not been created when that bill was prepared. We therefore hold that its employees may be granted the increase authorized in Chapter 6, Acts of the First Called Session of the 53rd Legislature.

Yours very truly,

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