



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

November 12, 1954

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

Letter Opinion No. MS-162
Re: Transfer of monies of the
Commodity Distribution
Program to the separate
revolving funds.

Dear Mr. Winters:

In summary, your question is substantially as follows:

Does H. B. 441, Acts 53rd Leg., R.S. 1953, ch. 305, p. 757, authorize the Comptroller of Public Accounts to honor purchase vouchers issued by the State Department of Public Welfare which request the transfer of money from a special account in the Treasury to certain revolving funds known as the "Commodity Distribution Funds"?

This Act in brief creates the "Commodity Distribution Division" in the Department of Public Welfare and provides the modus operandi for the division. The purpose in creating this new division was to secure the widest and most efficient distribution of the agricultural commodities made available by the federal government to eligible recipients within this State. In order to effectuate that purpose the Legislature authorized the State Department of Public Welfare to establish distribution districts on a geographical basis and to employ distributing agents. The Department was further authorized to levy reasonable handling charges upon all recipients in order to defray the costs incurred in distributing the commodities.

The Act then provides that:

". . . the money to be assessed shall be paid to the State Department of Public Welfare and shall be used for no other purposes except for the necessary economic operation of the Program subject to rules and regulations which may be established by the State Department of Public Welfare, by the provisions of this Act, and by the provisions of the general appro-

priation Acts of the Legislature, The funds received by the State Department of Public Welfare shall be deposited in a separate account in the State Treasury, and shall be subject to withdrawals upon authorization by the Executive Director of said Department. The State Department of Public Welfare is hereby authorized and empowered to establish in each Distribution District, under the direction of the State Department of Public Welfare, a revolving fund or petty cash expense fund for the purpose of making emergency payments for services or goods, or other necessary emergency activities. The amounts of such funds shall be set by the Executive Director of the State Department of Public Welfare in relation to the anticipated needs of the respective Districts and in accordance with rules and regulations prescribed by the State Department of Public Welfare. Creation and reimbursement of said revolving fund shall be paid out of assessments collected by the State Department of Public Welfare from the recipients of commodities." (Emphasis added.)

Each revolving fund is to be deposited in an account to be known as the "Commodity Distribution Fund." The Legislature then appropriated \$17,000.00 "for the fiscal year ending August 31, 1954" out of the assessment levied for the handling of commodities -- this sum to be used for the "initial" creation of the several revolving funds.

The Department of Public Welfare has at this date set up a total of seventeen distribution districts, thus allowing for a possible deposit of \$1,000.00 in each of the seventeen revolving or petty cash funds. Instead, the sum of \$500.00 was deposited in each of the revolving funds, because no more money was needed at that time.

On the basis of the \$17,000.00 line item appropriation by the Legislature, the State Comptroller of Public Accounts now refuses to transfer any additional money to the revolving funds. The Comptroller concedes that the Department of Public Welfare may reimburse these revolving funds indefinitely up to and including the amount of \$500.00 out of the special account in the Treasury wherein the assessments levied on the consumers are deposited. But the Comptroller refuses to honor purchase vouchers requesting the transfer of an additional \$500.00 to each revolving fund on the grounds that ". . . the funds set out in House

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Bill 441, Acts of the 53rd Legislature, for the purpose of initially creating revolving funds in the amount of \$17,000.00 expired on August 31, 1954. ..."

It is a well settled rule of law that, in the construction of legislative enactments, the intention of the Legislature, as determined from the entire act, must always prevail. Popham v. Patterson, 121 Tex. 615, 51 S.W. 2d 680 (1932); Reed v. City of Waco, 223 S.W.2d 247 (Tex.Civ.App. 1949, error ref.); City of Mason v. West Texas Utilities Co., 150 Tex. 18, 237 S.W.2d 273 (1951); 39 Tex.Jur. 209-212, sec. 113.

From the underlined segments of that portion of H.B.441 which is quoted above, it is clear that the Legislature did not intend to set any limitation upon the amount of money which may be deposited in each revolving fund. The amounts to be deposited in such funds are wholly within the discretion of the Executive Director of the State Department of Public Welfare, under rules and regulations prescribed by the Department. The line item appropriation of \$17,000.00 for the year ending August 31, 1954, was made for the purpose of "initially creating revolving funds." These funds having been created before August 31, 1954, the purpose of the specific appropriation was accomplished. It is of course true that the specific appropriation has expired, and it is no longer available for use. But, by the terms of the Act itself, an increase in the revolving funds may be made at any time out of current assessments so long as there is money available from this source.

The Executive Director of the Department of Public Welfare has the power and discretion to fix the amounts of money which are to be placed in each revolving fund. The Legislature further provided that the money in the revolving funds is to be drawn from the special account in the Treasury and, under our Opinion No. MS-99, it is clear that this constituted a specific appropriation. As stated above, the Act specifically provides, "Creation and reimbursement of said revolving fund shall be paid out of assessments collected by the State Department of Public Welfare from the recipients of commodities." It is therefore the opinion of this office that the Comptroller is authorized to honor the purchase vouchers requesting transferral of an additional \$500.00 out of current assessments to each revolving fund.

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Yours very truly,

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