



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

August 23, 1956

Honorable James A. Bethea, M. D.  
Executive Director  
Board for Texas State Hospitals & Special Schools  
Austin, Texas

Letter Opinion No. MS-259  
Re: Validity of interagency  
contract between Board for  
Texas State Hospitals and  
Special Schools and Central  
Education Agency concerning  
vocational rehabilitation  
services to patients of the  
McKnight Hospital.

Dear Dr. Bethea:

You have requested an opinion concerning the validity of the above captioned interagency contract. Under this contract the Central Education Agency agrees to provide counseling and clerical personnel to carry on the vocational rehabilitation of tuberculosis patients. The Board for Texas State Hospitals and Special Schools agrees to pay for the vocational rehabilitation services out of the appropriation to the McKnight State Tuberculosis Hospital at the rate of 35% of the total cost of the rehabilitation services, not to exceed \$5,000 for the period of the contract. The contract is in force from November 1, 1955 to August 31, 1956. This contract was approved by the State Board of Control.

The Comptroller of Public Accounts turned down vouchers in the payment of this contract, and in a letter addressed to this office, has stated his objections as follows:

"1. I was presented with an account for a Rehabilitation Program including counseling, training, purchase of equipment, supplies and etc., drawn in favor of the Texas Education Agency and against funds appropriated to a Tubercular Hospital. It was at this time I asked for legal authority for the institution to expend State

Funds for such a program. This request was made in line with the time-honored belief that in the absence of specific Statutory authority one State Agency could not assume duties given by law to another.

"2. There is no question that by statute, the Vocational Rehabilitation Program of this State, for the people who are not wards of the State, with the exception of that part given by law to the Texas Blind Commission is vested in the Texas Education Program.

"3. I later agreed in view of the fact that the Hospital has authority to employ rehabilitation counselors to remove my objection to the paying for services of an individual for the institution involved.

"4. The appropriation to all Tubercular Hospitals carry this restriction which is found in Article II, Section 2b, of House Bill 140, Acts of the 54th Legislature. It reads as follows:

"b. (1) Salary Rates. The Board for Texas State Hospitals and Special Schools, may employ personnel in Hospitals and Institutions only within the position titles shown and at annual salary rates not to exceed those specified below, except for teachers or temporary labor as provided for in this Article."

"5. The Legislature having placed a definite restriction as to the salary rate to be paid a rehabilitation counsel, the counselor for the Texas Education Agency is a full time State Employee, I was faced with the problem of two state agencies removing a legislative restriction by the execution of a contract between themselves. In studying this problem, I was forced to the opinion that if this could be done, any restriction placed in the appropriation bills could be removed by such an instrument.

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"6. I believe the answer as to the rate of pay is found in your recent opinions concerning a restriction found in the same appropriation bill in which the salary limitation is included. See Article III, Section II, House Bill 140, 54th Legislature."

The State Board of Control, pursuant to the provisions of Section 5 of Article 4413(32), Vernon's Civil Statutes, has determined that the services specified in the contract are necessary and essential for activities and work that are properly within the statutory functions and programs of the affected agencies of the State Government; that the proposed arrangements serve the interests of efficient and economical administration of the State Government; and that the specified bases for reimbursing actual costs are fair, equitable, and realistic and in conformity with the limitations of funds prescribed in the current appropriations act or other applicable statutes.

You have informed us that the services performed under the contract are essential to the medical treatment of patients in the McKnight Hospital.

The Central Education Agency is authorized to perform the services of vocational rehabilitation education. Article 2654-3, 2675-1 and 2675j, V. C. S.

Section 5 of Article 4413(32), provides:

"No agreement or contract may be entered into or performed which will require or permit an agency of the State to exceed its constitutional or statutory duties and responsibilities, or the limitations of its appropriated funds."

Since both agencies are authorized to perform the services called for in the contract, the contract does not call for an agency to exceed its constitutional or statutory duties and responsibilities. Since there is available appropriation out of the McKnight Hospital appropriation, it does not exceed the limitations of its appropriated funds. The money paid pursuant to this contract is paid to the Central Education Agency and not to a state employee.

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Therefore, the provisions of Section 2b of Article II of House Bill 140, Acts of the 54th Legislature, 1955, are not violated. You are, therefore, advised that the interagency contract accompanying your request is valid and enforceable.

Pursuant to the Comptroller's request, we are returning to you vouchers on this contract for further process.

Yours very truly,

APPROVED:

JOHN BEN SHEPPERD  
Attorney General

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County Affairs Division

  
By

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JR:zt