



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 26, 1957

Dr. Henry A. Holle
Commissioner, State
Department of Health
Austin, Texas

Opinion No. WW-241

Re: Handling of funds received from
the federal government and va-
rious municipalities pursuant to
provisions of House Bill 434,
Acts of 55th Legislature, Regu-
lar Session, 1957.

Dear Dr. Holle:

Your request for an opinion, dated August 12, 1957, concerns the interpretation and execution of the provisions of House Bill 434, page 235, Acts 55th Legislature, Regular Session, 1957.

The Act was designed to enable the State to participate in and receive grants pursuant to the Federal Housing Act of 1954, as amended. The latter Act, and the administrative rules promulgated pursuant thereto, make federal funds available to state planning agencies to "facilitate urban planning for smaller communities lacking adequate planning resources". The federal grants in each instance shall not exceed 50 per centum of the estimated cost of the work for which made. The remainder of the aggregate costs must be provided by the state and may be derived by the latter from "various sources such as state appropriations, gifts or contributions of cash or technical services from aided municipalities". House Bill 434 designates the State Department of Health as the State agency to receive said federal funds and to contract with reference thereto.

In connection with the foregoing, you have propounded for our consideration the following questions:

1. May the Department of Health assess each participating city a sum, in addition to the actual project costs, sufficient to employ personnel needed to effectively administer the program?

2. If the funds from the federal government and from the applicant-city are deposited in the State Treasury, can warrants against such a special account be issued?

3. If there is no authority for depositing funds from municipalities in the State Treasury and withdrawing them, can the funds received from the federal government and from the municipalities legally be deposited in a local bank and checks issued against said account for planning services rendered in order to carry out the planning program?

4. If either of the above mentioned procedures are not authorized, will you kindly suggest to us, if possible, the procedure for handling these funds which will permit us to carry out the intent of the provisions of H.B. 434?

Section 1 of House Bill 434 provides as follows:

"The State Department of Health is hereby authorized, upon request of the governing body of any municipality having a population of 25,000 or less in this State; (a) to arrange planning assistance (including surveys, urban renewal plans, technical services and other planning work) and to arrange for the making of a study or report upon any planning problem of such municipality, submitted to the State Department of Health, providing however that the employees of the State Department of Health shall not themselves make such surveys, studies or reports. (b) to agree with such governing body as to the amount, if any, to be paid to the State Department of Health for such service, and (c) to apply for and accept grants from the Federal Government or other sources in connection with any such assistance, study, or report, and to contract, with respect thereto. The regular functions of the Texas State Department of Health may be utilized on this program, provided that any additional employees shall be paid from sources other than General Revenue funds of the State."

It is noted that the Legislature has not appropriated any state funds to carry out the provisions of House Bill 434. Section 1b of the Act authorizes the State Department of Health to agree with the governing body of each participating city as to the amount, if any, to be paid to the State Department of Health and Section 1c prohibits use of general revenue funds to employ additional personnel for such service. We think it clear that the Legislature contemplated that the state's share of the project costs should be derived from the participating cities with the single exception that the regular functions of the Department of Health may be utilized.

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House Bill 434 authorizes the State Department of Health and the participating city to agree on the amount to be paid by the city. The amount agreed upon can doubtless include not only the state's pro rata share of the project cost but may include, if necessary, an additional sum representing the city's fair share of the added administrative costs, of a continuing nature, incurred by the Health Department in administering the program. This view finds support in the fact that House Bill 434 expressly prohibits the use of general revenue funds for such purposes but indicates that funds derived from other sources may be so expended. The distribution and assessment of such costs must, of course, be fairly and equitably made as between the various cities.

Your first question is accordingly answered in the affirmative.

Your second question involves the handling and disbursement of the funds received from both the federal government and the municipalities. A careful analysis of the objects sought to be attained by House Bill 434 and the Federal Housing Act of 1954, excludes the idea that such funds should be deposited in the general revenue fund and be subject to payment only by legislative appropriations. We think that such monies may properly be placed in the hands of the State Treasurer, but not in the State Treasury, who becomes a custodian or trustee thereof, disbursing same under the directions of the State Department of Health in fulfillment of the purposes for which same were received. In other words, the funds here provided are trust funds and do not belong to the State in its sovereign capacity, but are received and are to be expended for a special purpose.

This view is supported by the Supreme Court of Texas in the case of Friedman v. American Surety Co. of New York, 151 S.W.2d 570. In discussing a special fund (Unemployment Compensation Fund) the Court said:

"The money here involved is not the property of the State in any capacity but is a Trust Fund to be held out of the State Treasury, but in the hands of the State Treasurer as trustee, for the benefit of a class of employees. . . .

"In Manion v. Lockhart, 114 S.W.2d 216, this court clearly decided that it is not in violation of our constitution to make the State Treasurer custodian of a fund that does not belong to the State, and does not belong in the State Treasury."

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See also: Manion v. Lockhart, State Treasurer, 131 Tex. 175, 114 S.W.2d 218; Smith v. Paschal, 1 S.W.2d 1086 (Tex. Comm.App.); Tatum v. Wheelless, 180 Miss. 800, 178 So. 95; 108 A.L.R. 595.

In reply to your second question you are advised that the funds received from both the federal government and the municipalities may properly be placed in the hands of the State Treasurer, but not in the State Treasury, as a trust fund, and be disbursed therefrom for the purposes for which received.

In view of our answer to your second question, it becomes unnecessary that we answer the last two questions.

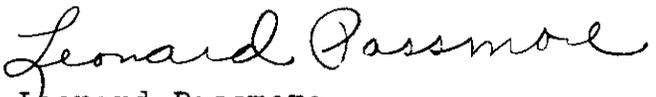
SUMMARY

Pursuant to House Bill 434, Acts 55th Legislature, Regular Session, 1957, page 235, the State Department of Health is authorized to agree with each participating municipality as to the latter's pro rata share of the project costs. The amount agreed upon may include an additional sum representing each city's fair share of the added administrative costs, of a continuing nature, incurred by the State Department of Health in administering the Act.

The funds received by the State Department of Health from both the federal government and the participating municipalities may properly be placed in the hands of the State Treasurer, but not in the State Treasury, as a trust fund, and be disbursed therefrom for the purposes for which received.

Very truly yours,

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