



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 20, 1957

Honorable Raymond W. Vowell
Acting Executive Director
Board for Texas State Hospitals
and Special Schools
Austin, Texas

Opinion No. WW-329

Re: Were the appropriations
under Article II, House
Bill 133, Acts, 55th
Legislature, R.S., 1957,
pages 908-911, made to
the Board for Texas
State Hospitals and
Special Schools Central
Office or made directly
to the institutions
concerned?

Dear Mr. Vowell:

You have requested our opinion on whether the appropriations for major repairs, rehabilitation and replacement of buildings, found in House Bill 133, Acts, 55th Legislature, R.S. 1957, Chapter 385, pages 908-911, were made to the individual institution concerned, or to the Board for Texas State Hospitals and Special Schools Central Office.

Under the heading "State Hospitals and Special Schools Building Program", Acts, 55th Legislature, R.S. 1957, Chapter 385, page 908, the Legislature has prefaced the major repairs, rehabilitation and replacements appropriations as follows:

"There is hereby reappropriated to the Board for Texas State Hospitals and Special Schools for each of the fiscal years of the biennium covered by this appropriation, any unexpended balances remaining in the State Hospitals Building Fund appropriated by H.B. No. 111, Chapter 81, Acts, Fifty-third Legislature, Regular Session, 1953, and H.B. No. 140, Acts, Fifty-fourth Legislature, Regular Session, 1955, including accrued interest, for the payment of expenses of architectural and engineering plans, the construction and equipment of new buildings, the repair and rehabilitation of buildings, the employment of construction project inspectors, mechanics and laborers as may be necessary, to pay travel expenses for such construction project supervisors only, and to pay

all claims against the prior appropriation of these funds which are now barred or may be barred by the operation of Article 4357, Revised Civil Statutes.

"The Board for Texas State Hospitals and Special Schools, in carrying out the construction, repair, and rehabilitation program as authorized by this Act, is hereby authorized to use such sums as may be necessary for the payment of expenses of architectural and engineering plans, the construction and equipment of new buildings, the repair and rehabilitation of buildings, to employ construction project inspectors, mechanics and laborers as may be necessary, and to pay travel expenses for such construction project supervisors only, from moneys appropriated by this Act. Wages for labor shall not exceed the prevailing wage scale in the locality where the work is done.

"There is hereby appropriated out of the General Revenue Fund the following amounts for major repairs, rehabilitation, building replacements and new construction; provided, however, that if the 55th Legislature should enact a law allocating cigarette tax revenues or a portion thereof to the State Hospital Building Fund, then the appropriations specified below shall be made from said Hospital Building Fund pursuant to such law instead of from the General Revenue Fund:"

At the end of the appropriations for major repairs, rehabilitation and replacements, on page 911 is found the following expression of Legislative intent, which reads:

"It is hereby declared to be the Legislative intent that the appropriations listed above for major repairs, rehabilitation and replacement, and for new construction of buildings shall be expended as nearly as practicable in the manner specified; however, the Board for Texas State Hospitals and Special Schools is authorized to transfer such amounts as it deems necessary from one appropriation item to another for repairs, rehabilitation, replacements, or new construction with the approval of the Governor after obtaining the advice of the Legislative Budget Board.

"Any unexpended balances in such appropriation items may be used for other needed repairs, replacements or new construction. The unexpended balances as of August 31, 1958 are hereby reappropriated for major repairs, rehabilitation, replacement or new construction during the fiscal year beginning September 1, 1958."

The above quoted provisions all make reference to the Board for Texas State Hospitals and Special Schools and its authority over expenditures of these funds. The Legislature even declared its intent that the Board for Texas State Hospitals and Special Schools can transfer funds from one line item to another for repairs, rehabilitation, replacements or new construction when approved by the Governor. The portion of the statute providing for the advice of the Legislative Budget Board cannot be a condition precedent to or in any way a condition of approval by the Governor. See Attorney General's Opinion Number WW-282 (1957) wherein it was stated:

"The main duties and functions of the Legislature is to enact laws, while one of the main duties of the Executive is to put the laws into effect and supervise their execution. Under the doctrine of the separation and division of powers those two functions should be kept separate with a sharp line of demarcation between them."

It is, therefore, our opinion that the funds were appropriated to the Board for Texas State Hospitals and Special Schools Central Office, to be expended as nearly as practicable as set out in the line items for the various institutions.

SUMMARY

The appropriations for major repairs, rehabilitation and replacements, in House Bill 133, Acts 55th Legislature, Regular Session, 1957, pages 908-911, are made to the Board for Texas State Hospitals and

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Special Schools Central Office, rather
than the various institutions designated
in the line items.

Very truly yours,

WILL WILSON
Attorney General of Texas

By 
Galloway Calhoun, Jr.
Assistant

GC:pf

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

J. C. Davis, Jr.
John Reeves
Leonard Passmore
W. V. Geppert

REVIEWED FOR THE ATTORNEY GENERAL

By: James N. Ludlum.