



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. Lee O'Daniel
Governor of Texas
Austin, Texas

Dear Governor O'Daniel:

Opinion No. 0-1479

Re: Issuance of warrants on State
Department of Public Welfare
Fund for Old Age Assistance
pursuant to Senate Bill No.
36.

We are pleased to reply to your letter of September 21, 1939, relating to the above matter, which we shall quote in full:

"Senate Bill No. 36 known as the State Department of Public Welfare bill was passed by the regular session of the Forty-sixth Legislature and provided for assistance to aged persons of Texas, and as an act superceded House Bill No. 8 passed by the Third Called Session of the Forty-fourth Legislature.

"Senate Bill No. 427 passed by the Regular Session of the Forty-sixth Legislature and known as the departmental appropriation bill, appropriated all revenues accruing under existing laws for the biennium beginning September 1, 1939 to the State Department of Public Welfare for old age assistance.

"It is estimated that \$19,246,000.00 per year will be required to maintain the pension program on the 1938-39 basis for the biennium beginning September 1, 1939, of which one-half, or approximately \$9,623,500.00, represents the approximate amount required each of the years of the

biennium from State funds. Estimated revenue for the biennium beginning September 1, 1939, amounts to approximately \$11,575,000.00 for each year or \$23,150,000.00 for the biennium.

"House Bill No. 179 passed by the Regular Session of the Forty-sixth Legislature allocated approximately \$2,230,000.00 from the old age assistance funds during the approximate period of the fiscal year ending August 31, 1940, for the liquidation of warrants issued prior to September 1, 1939. The allocation deprives the fund of revenue for old age assistance during the first part of the current period, the amount of which is necessary to maintain the program unless the revenue for the entire biennium can be equalized over the entire two years of the appropriation.

"I will appreciate your opinion on the following questions:

"(1) It is contemplated that estimates of revenue under present laws with necessary periodical revisions will have to be made for the current period, which is the biennium beginning September 1, 1939, and after deduction of the amount necessary to liquidate old warrants (\$2,230,838.50) the balance should be approximately equally allocated by months to maintain the program for the current biennium, Is such a procedure legal, and if so, what agency of the Texas government is required to make such estimates of revenue?

"(2) Assuming that investors may be found who will agree to hold non-interest-bearing old age assistance warrants, without discount, issued under proper authority to old age assistance recipients, by authority of the State Department of Public Welfare, may such warrants be issued at any time during the current two-year period, as required, to carry out the program on the present basis, provided such warrants issued do not exceed the available appropriated revenue for assistance purposes for the current biennium?

"(3) Assuming that there would be an accumulation of validly issued outstanding warrants at February 1, 1941, not exceeding the uncollected appropriated revenue for the final seven months of the biennium, would such warrants, under existing laws, be a charge against appropriated old age assistance revenues to be collected during the period February 1, 1941, to August 31, 1941? (Revenue to be collected under present laws for the period from February 1, 1941, to August 31, 1941, is estimated to be approximately \$6,625,000.00).

"(4) Section 44 of Senate Bill No. 36 known as the State Department of Public Welfare Act reads as follows:

"Sec. 44. 'If at any time State Funds are not available to pay all grants of assistance in full as authorized in this Act and in House Bill No. 8, Acts Forty-fourth Legislature, Third Called Session, said grants shall be prorated in accordance with requirements of the Federal Social Security Board, insofar as those grants are concerned for the payment of which in part Federal Funds are allocated by said Social Security Board.

"The effect of this section of the Act apparently must be considered in the interpretation of the validity of warrants issued, against appropriated revenues to the assistance fund. This section seems to mean that such prorations and limitations as are applied by the statute are contingent upon the Federal Social Security Board first applying such prorations and limitations, and until applied by them in matching state funds, is not to be applied by the State Department of Public Welfare in their administration.

"In this connection I would like to ask if there is any law on our statutes requiring the prorating of payments to recipients of old age assistance other than the above section, and what is the proper interpretation of the above section? ✓

"Due to an existing condition in which time is the essence of the situation, I will appreciate your effort to furnish me your opinion on the questions submitted as early as possible."

The determination of the several questions asked in your letter necessitates a careful consideration of the constitutional provision and statutes applicable thereto.

Old Age Assistance legislation was authorized by constitutional amendment adopted at an election held August 24, 1935, which now appears as Section 51b, Article 3, of the Texas Constitution, and reads, in part, as follows:

"The Legislature shall have the power by general laws to provide, under such limitations and restrictions and regulations as may be deemed by the Legislature expedient, for old age assistance and for the payment of same not to exceed Fifteen Dollars (\$15) per month each to actual bona fide citizens of Texas who are over the age of sixty-five (65) years . . ."

It is to be noted that this constitutional amendment is on its face neither mandatory nor self-executing. It merely creates an additional exception to the prohibition contained in Section 51, Article 3, against the granting of public moneys to individuals, etc., and to that extent, expands the authority of the Legislature.

The first enactment under this constitutional amendment was passed in 1935 by the Second Called Session of the 44th Legislature, being House Bill No. 26, Chapter 472, p. 1854, of the laws of said Session of the Legislature, which bill was entitled the "Old Age Assistance Act." This Act created the Old Age Assistance Commission, set up the standards and methods for its operation, and created the "Texas Old Age Assistance Fund" as a special fund in the Treasury out of which all expenses of administration and benefit payments to the recipients of Old Age Assistance were to be paid. The general plan and outline for the administration and payment of Old Age Assistance which was set up by said House Bill No. 26 is still maintained although the Act has been twice amended.

In October, 1936, the 44th Legislature at its Third Called Session amended the Old Age Assistance Act by House Bill No. 8, Chapter 495, p. 2040, of the General and Special Laws of said session by designating the State Board of Control as the Old Age Assistance Commission, making a few minor changes in the administrative details of the Act and providing omnibus tax measures, the proceeds of which were made payable to the Old Age Assistance Fund.

The Old Age Assistance Act was amended a third time by Senate Bill No. 36, enacted by the Regular Session of the 46th Legislature in 1939. This Act places the administration of Old Age Assistance under the supervision of the newly-created Department of Public Welfare. What was designated as the "Old Age Assistance Fund" in House Bill No. 8 is made a division of the "Texas Public Welfare Fund." Only minor changes, however, are made in the general plan of administering Old Age Assistance and the fund out of which Old Age Assistance payments are made. Said Senate Bill No. 36 is the latest enactment of the Legislature on the question of Old Age Assistance and its provisions are therefore controlling, but a study and comparison of the three Acts above referred to indicates that the same general plan and purpose was sought to be accomplished by each of the three Acts. This being true, we believe that it will be helpful to examine and consider those provisions in each of the three Acts which relate to the fundamental question contained in your letter, i.e., whether warrants may be issued against anticipated revenues to come into the Old Age Assistance Fund when there are no moneys presently available in said Fund for the payment of such warrants.

House Bill No. 26, chapter 472, Acts 1935, 44th Legislature, Second Called Session, in Section 9 (b) thereof provides, in part:

" . . . And for the purpose set out there is hereby appropriated out of such fund the sum of Twenty-five Million Dollars (\$25,000,000) or so much thereof as may be necessary, for the biennium ending September 1, 1937. Provided that if the fund is insufficient to pay all grants in full, the same shall be paid pro rata based on the amount granted to each recipient."

House Bill No. 8, chapter 495, Act 1936, 44th Legislature, Third Called Session, in Article 1, Section 1, thereof

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provides, in part:

" . . . In order that the needy aged be cared for, it is necessary that the State have funds on hand to meet the accruing obligations therefor."

and in Section 11 (b) thereof, provides:

" . . . and for the purposes set out there is hereby appropriated out of such fund the sum of Seven Million Dollars (\$7,000,000), or so much thereof as may be necessary, for the fiscal year ending August 31, 1937. Provided that if the fund is insufficient to pay all grants in full, the same shall be paid pro rata based on the amount granted to each recipient."

Senate Bill No. 36, Acts 1939, 46th Legislature Regular Session, provides in Section 44 thereof:

"If at any time State funds are not available to pay all grants of assistance in full as authorized in this Act and in House Bill No. 8, Acts 44th Legislature, Third Called Session, said grants shall be prorated in accordance with requirements of the Federal Social Security Board, insofar as those grants are concerned for the payment of which in part Federal Funds are allocated by said Social Security Board."

It is to be noted that the above quoted provision from House Bill No. 26 and the one quoted from House Bill No. 8 are identical. While the wording of Section 44 of Senate Bill No. 36 is somewhat different, we believe that its intent and effect is the same as that of the provisions of the prior two Acts. What is the meaning of the word "available" in the phrase "if at any time State funds are not available to pay all grants of assistance in full?" "Available" is defined in Webster's New International Dictionary, Second Edition as "at disposal; accessible or attainable; as tickets available that day."

As aptly stated by Mr. Justice Brady of the Austin Court of Civil Appeals in the case of Lawson v. Baker, 220 S. W. 260:

"Statutes will be interpreted according to the popular meaning employed, except where used in a technical sense. In other words their effect will be determined by the plain and ordinary meaning of the language used."

There can be no question but that the plain and ordinary meaning of the word "available" refers to something which is presently at hand and usable. We are unable to escape the conclusion that in the plain and ordinary meaning of the language used, moneys which may be expected to come into a fund eighteen months later are not available funds according to the popular meaning of the word "available".

We are persuaded that the Legislature intended in Section 44 of Senate Bill No. 36, as well as in the corresponding provisions of the prior Acts, above quoted, to insist that the Old Age Assistance Fund be administered on a "pay as you go" basis.

Senate Bill 36 itself appropriates no money. It merely reaffirms the allocation of certain taxes to the old age assistance fund, as indicated by the following provisions of S. B. 36.

Sec. 11b". . . All monies that have heretofore, or may be, allocated, for the purpose of carrying out the provisions of House Bill No. 8, Chapter 495, Acts of the Third Called Session of the Forty-fourth Legislature, to the Texas Old Age Assistance Fund shall, from the effective date of this Act, be allocated to and placed in the State Department of Public Welfare Fund to be used for the purposes for which they were created or appropriated."

Sec. 37a. "There is hereby created in the Treasury of the State of Texas a special fund to be known as the 'State Department of Public Welfare Fund', to be kept separate and apart from all other

funds by the State Treasurer. It is provided that the Legislature, out of any monies allocated to said Fund, may appropriate sums of money sufficient to pay the aid and assistance to needy citizens of Texas and for the rendering of other services as provided for in this Act. It is further provided that, out of said Fund, the Legislature may appropriate monies to be used for the purposes of administering this Act."

In accordance with the above allocation of income, the Legislature in Senate Bill No. 427, Acts 1939, Regular Session of the 46th Legislature, known as the Departmental Appropriation Bill, appropriated this income of the Old Age Assistance Fund to the State Department of Public Welfare in the following language:

"All income to the Texas Old Age Assistance Fund, as transferred to the State Department of Public Welfare Fund by Senate Bill No. 36, Acts, 46th Legislature, Regular Session, together with any balances on hand at the end of a prior fiscal year, is hereby appropriated for each of fiscal years ending August 31, 1940, and August 31, 1941, to the State Department of Public Welfare for old age assistance and for salaries, equipment, supplies, travel, maintenance, and contingent expenses necessary in the extension of said old age assistance and in administering all the duties required of said Department by the Old Age Assistance Laws, . . ."

It is to be noted that the Legislature here made two separate and distinct appropriations "for each of fiscal years ending August 31, 1940, and August 31, 1941." By this language the Legislature manifestly intended that only the income of the fund accruing during the fiscal year ending August 31, 1940, should be spent in that year. Ignoring, for the moment, the "pay as you go" direction of Section 44, Senate Bill 36, the very terms of this appropriation forbidd the expenditure during this fiscal year of more than ✓ the income of this year. We do not wish to imply that the

Legislature might not have the power, under the Constitution, to authorize the expenditure at any time of the anticipated income of the Fund during the current biennium. This was expressly authorized by the Legislature in House Bill 179, Acts 1939, 46th Legislature, Regular Session, and as we stated in our opinion to you under date of February 14, 1939, opinion No. O-315, this Act constituted a valid exercise of legislative authority under the decisions therein cited. Charles Scribner's Sons v. Marrs, 262 S. W. 722; McNeal v. City of Waco, 89 Tex. 83, 33 S. W. 322; City of Corpus Christi v. Woessner, 58 Tex. 462; City of Terrell v. Dessaint, 71 Tex. 770, 9 S. W. 593. We are here, however, not concerned with the constitutional limitations upon the power of the Legislature to provide means for the payment of old age assistance. Our problem is to determine what means the legislature has provided, and what limitations it has imposed upon the State Department of Public Welfare in its administration of the Old Age Assistance Fund. The answers to these questions must be found in the applicable Legislative Acts. The above quoted provisions from House Bill No. 26, House Bill No. 8 and particularly Section 44 of Senate Bill No. 36 clearly indicate, we believe, a consistent intention on the part of the Legislature that old age assistance shall be administered on a "pay as you go" basis. This conclusion is confirmed by the fact that the Legislature has deemed it necessary on two occasions to pass emergency measures in the nature of express exceptions to that general policy. We refer to House Bill 37, Chapter 496, Acts 1936, 44th Legislature, Third Called Session and House Bill 179, Acts 1939, 46th Legislature, Regular Session.

House Bill No. 37 authorized the Texas Old Age Commission to issue interest-bearing warrants in the total amount of \$3,000,000.00 "when the cash balance of the moneys deposited to the credit of said fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements."

House Bill No. 179 authorized the issuance of an additional \$900,000.00 worth of interest-bearing "warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys to the credit of said fund by the State of Texas is insufficient to pay the State's part of the pension requirement." This Act provides for the payment of these warrants and other outstanding warrants which had been authorized by House Bill No. 37, and appropriates money therefor

out of the Old Age Assistance Fund upon a schedule of payments as set out in the Act which extended to September 10, 1940, i. e., into the fiscal year ending August 31, 1941. This schedule of payments is recognized in the Departmental Appropriation Bill of 1939 (S. B. No. 427, Acts 46th Legislature) and the money therefor is again expressly reappropriated therein. In the absence of the express authority granted it by the Legislature by House Bill 179, the Old Age Assistance Commission would not have been empowered to issue this \$900,000.00 worth of warrants when there was not sufficient money in the fund to pay them (under Section 11b of House Bill No. 8, quoted above) nor could it have provided that a part of such warrants should be paid out of revenues to accrue during the fiscal year ending August 31, 1941, there being no appropriation therefor. The State Department of Public Welfare is a creature of the Legislature; it may exercise only such powers as the Legislature has delegated to it, and it may expend only such moneys as the Legislature has appropriated to it. *Pickle v. Finley*, 91 Tex. 484, 44 S. W. 480.

The money appropriated to the State Department of Public Welfare for old age assistance is not a certain sum but consists of all the revenue accruing from certain designated taxes. In this respect the appropriation is similar to that of the Highway Department. In construing the authority of the Highway Department to expend the money appropriated to it, the Austin Court of Civil Appeals said in *Atkins v. State Highway Department*, 201 S. W. 226:

"Here is appropriated all of the funds coming from certain sources, which, as collected and deposited with the State Treasurer to the credit of a special fund designated as the 'State Highway Fund.' No other money in the state treasury can be touched for the purposes stated in the acts here in question. No greater amount than that deposited in said fund can be used for said purposes." (Underscoring ours)

Bearing in mind the statutes and general principles hereinbefore discussed we shall proceed to a consideration of the several specific questions asked in your letter.

"(1) It is contemplated that estimates of revenue under present laws with necessary periodical revisions will have to be made for the current period, which is the biennium

beginning September 1, 1939, and after deduction of the amount necessary to liquidate old warrants (\$2,230,858.50) the balance should be approximately equally allocated by months to maintain the program for the current biennium. Is such a procedure legal, and if so, what agency of the Texas government is required to make such estimates of revenue?"

We have been unable to find any statute which directs that estimates of revenues which may accrue to the Old Age Assistance Fund shall be made. In the event that the State Board of Public Welfare or the Executive Director of the State Department of Public Welfare should deem it expedient to make such estimates, either pursuant to the requirements of the Federal Social Security Board, or for any other proper reason, we would suppose that either the Welfare Board or the Executive Director could properly make such estimates with the aid of the Comptroller, State Auditor or any other qualified state officer.

It has been declared that the Highway Commission may make estimates of revenues to accrue to the highway fund. Johnson v. Ferguson, 55 S. W. (2) 153, (Austin Court of Civil Appeals) at page 158:

"No standard or criterion for estimating them is prescribed by law; nor is there any express designation of the official, board or agency to make such estimate. It therefore follows necessarily that the highway commission is vested with such authority in the general discharge of its important duties; and that in the exercise of such authority it is vested with the discretion of adopting such reasonable methods, standards, and criteria as in its judgment are sound and appropriate."

Assuming that the State Board of Public Welfare or the Executive Director has made such estimate of future revenues of the Old Age Assistance Fund, we are unable to agree with your statement that the estimated revenues for the biennium "after deduction of the amount necessary to liquidate old warrants (\$2,230,858.50) the balance should be approximately equally allocated by months to maintain the program

for the current biennium." Such a procedure would, we believe, be contrary to the expressed intention of the Legislature in three particulars:

(a) If the monthly quota, so determined, should at any time be greater than the credit balance in the Old Age Assistance Fund, then the Welfare Board may not authorize the issuance of warrants for such month in excess of such credit balance without violating the express direction of Section 44 of Senate Bill No. 36 to prorate the grants in such case. Section 44 does not say that grants shall be prorated if sufficient funds are not anticipated during the biennium. It says, "If at any time State funds are not available . . . said grants shall be prorated." The further direction that they shall be prorated "in accordance with requirements of the Federal Social Security Board" can only mean that in adopting the system or method of prorating, the State Board shall be guided by the requirements of the Federal Board, "insofar as those grants are concerned for the payment of which in part Federal Funds are allocated by said Social Security Board."

(b) By seeking to distribute the income of the biennium equally during the two fiscal years, the Welfare Board would be ignoring the fact that the appropriation bill makes a separate appropriation of the income of the fund to the State Department of Public Welfare "for each of the fiscal years ending August 31, 1940, and August 31, 1941." Under the most liberal construction of the word "available" the income to the fund for the fiscal year ending August 31, 1941, does not become available under the terms of the appropriation until September 1, 1940. Fulmore v. Lane, 140 S. W. 405.

(c) Senate Bill No. 36, as well as its predecessors, provides for adding the names of new recipients of old age assistance to the list of those already eligible. It must, therefore, of necessity contemplate that the total monthly grants which may be made cannot remain constant from September 1, 1939, to August 31, 1941. Therefore, to distribute the estimated income of the fund equally among twenty-four monthly payments would not be in keeping with the purposes manifested by considering Senate Bill No. 36 as a whole.

"(2) Assuming that investors may be found who will agree to hold non-interest-bearing old age assistance warrants, without discount, issued under proper authority to old age assistance recipients, by authority of the State Department of Public Welfare, may such warrants be issued at any time during the current two-year period, as required, to carry out the program on the present basis, provided such warrants issued do not exceed the available appropriated revenue for assistance purposes for the current biennium?"

In accordance with the general discussion in the first part of this opinion and our answer to your question No. (1), we answer this question in the negative.

"(3) Assuming that there would be an accumulation of validly issued outstanding warrants at February 1, 1941, not exceeding the uncollected appropriated revenue for the final seven months of the biennium, would such warrants, under existing laws, be a charge against appropriated old age assistance revenues to be collected during the period February 1, 1941, to August 31, 1941? (Revenue to be collected under present laws for the period from February 1, 1941, to August 31, 1941, is estimated to be approximately \$6,825,000.00)."

Validly issued outstanding warrants at February 1, 1941, would be a charge against appropriated old age assistance revenues for the remainder of the fiscal year. For a complete discussion of this question we refer to our opinion No. 0-590 addressed to Honorable W. A. Little, dated April 7, 1939, copy of which opinion we enclose herewith. We believe, however, for the reasons hereinabove stated, that in order that such a situation might come into existence, it would require an act of the Legislature to authorize the issuance of warrants in excess of moneys actually in the fund at date of issuance.

"(4) Section 44 of Senate Bill No. 36 known as the State Department of Public Welfare Act reads as follows:

"Sec. 44. If at any time State Funds

are not available to pay all grants of assistance in full as authorized in this Act and in House Bill No. 8, Acts Forty-fourth Legislature, Third Called Session, said grants shall be prorated in accordance with requirements of the Federal Social Security Board, insofar as those grants are concerned for the payment of which in part Federal Funds are allocated by said Social Security Board.

"The effect of this section of the Act apparently must be considered in the interpretation of the validity of warrants issued, against appropriated revenues to the assistance fund. This section seems to mean that such prorations and limitations as are applied by the statute are contingent upon the Federal Social Security Board first applying such prorations and limitations, and until applied by them in matching state funds, is not to be applied by the State Department of Public Welfare in their administration.

"In this connection I would like to ask if there is any law on our statutes requiring the proration of payments to recipients of old age assistance other than the above section, and what is the proper interpretation of the above section?"

We cannot agree with your statement that Section 44 of Senate Bill No. 36 "seems to mean that such prorations and limitations as are applied by the statute are contingent upon the Federal Social Security Board first applying such prorations and limitations . . ." It is our understanding that the Federal Board does not prorate benefit payments -- it merely matches dollar for dollar, the benefit payments provided by the several states. In the event a state, because of insufficiency of funds, is unable to pay in full its social security program, then the Federal Board prescribes certain rules for distributing the available state money among the eligible recipients, and the state is required to follow such rules as a prerequisite to obtaining federal aid. As hereinbefore stated, it is our opinion that Section 44 is an express direction to the State Department of Public Welfare

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to prorate grants of assistance "if at any time State funds are not available to pay all grants of assistance in full" and in the manner of applying the proration, the State Board shall be guided by the rules of the Federal Board in such cases. We know of no law or our statutes requiring the prorating of payments to recipients of old age assistance other than Section 44 of Senate Bill No. 36, except the corresponding provisions contained in House Bill 26 and House Bill 8 which are quoted in the first part of this opinion.

Yours very truly

ATTORNEY GENERAL OF TEXAS

(signed)

By

Walter R. Koch
Assistant

WRK:FL

ENCLOSURE

APPROVED SEP 30, 1939

(signed) Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
opinion committee
By BWB
chairman