



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

Feb. 17, 1948

Hon. C. H. Cavness
State Auditor
Austin, Texas

Opinion No. V-504.

Re: Specific questions respecting the applicability of regulations which apply generally to State departments, institutions, and agencies, to the Texas Employment Commission, in amplification of Opinion No. V-427.

Dear Sir:

We refer to your request for opinion on several specific questions respecting the applicability of regulations, which apply generally to State Departments, institutions and agencies, to the Texas Employment Commission in amplification of Opinion No. V-427.

In Opinion No. V-427 this department held that the Texas Employment Commission is a State Agency, yet with respect to Federal funds expended for administration of the agency the standards of the Social Security Administrator and the United States Employment Service of the Department of Labor and the rules and regulations adopted by the Commission to meet such standards primarily govern. Otherwise, the general provisions of the laws of this State are applicable.

We can appreciate fully your continued concern over the apparent conflict in State and Federal laws and regulations which apply to this "State Agency" financed through Federal appropriations. It is a perfect example of the hybrid nature and the Federal control which may be retained over a State Agency set up by co-operative Federal and State Statutes and financed by Federal funds. As pointed out in V-427 the terms and conditions of the Federal Statutes are recognized and agreed to by our State Statutes. Therefore, there is no alternative except to give primary authority to the Federal laws and regulations applicable just as the Texas Legislature has

done. In this connection, you now present the following questions:

"1. Is it necessary for the Legislative Audit Committee to approve the Texas Employment Commission's budget for the expenditure of its administration costs which are paid from 'Federal' funds?

"2. Is it necessary for the Texas Employment Commission to purchase its supplies, equipment, etc., and make its rental contracts, through the State Board of Control, under the same regulations that apply to other State Departments, Institutions, and Agencies?"

We have not found any general provision of the laws of this State which authorizes the Legislative Audit Committee to approve any State department's budget, nor is there any such provision in the Texas Unemployment Compensation Act. There are several provisions in the Departmental Appropriation Act concerning approval by the Legislative Audit Committee of the expenditure of funds of various State departments. It has been suggested that possibly such necessity of the Legislative Audit Committee's approval of the Texas Employment Commission's budget is implied from a similar paragraph of the Departmental Appropriation Act, page 930, which reads:

"All the above items appropriated for administration to the Texas Unemployment Compensation Commission shall be subject to the approval of the Legislative Audit Committee and none of the funds herein provided shall be spent until such approval shall have been obtained,"

In our opinion this provision relative to the Texas Employment Commission refers to the expenditure of the items appropriated and not to the preparation or approval of a budget. The moneys are not granted in trust by the Federal Government to the States, and thus are not appropriated, until a budget has been prepared and adopted in its final form. In other words, if the quoted provision grants any authority to the Legislative Audit Committee, such authority commences after the budgetary process peculiar to the Texas Employment Commission is completely finished. We again refer to Opinion No. V-427 for the construction

placed upon this quoted provision relative to expenditures.

Although it is not within the province of this office to construe the standards and programs of the various Federal agencies involved herein, we note that these standards and programs require the Texas Employment Commission to submit for consideration a budget request setting forth in detail the proposed expenditures. (Part IV, Vol. 1, Guide for State Employment Security Administration, Section 2000) Any differences are settled between the Commission and the respective regional supervisors with the final determination of the amounts necessary for the proper administration of the State's acts resting with the Federal agencies. (Section 2006, supra) These standards will reveal that there are no provisions for approval of the budget by any State Committee similar to the Legislative Audit Committee.

It is therefore our opinion that it is not necessary for the Legislative Audit Committee to approve the Texas Employment Commission's budget for the expenditure of its administrative costs which are paid from "Federal" funds.

Our attention has been called to Fiscal Instruction E. S. 501, Section 1200, which in effect holds that the State laws, rules, and regulations governing expenditures by State agencies shall control the expenditures of Federal funds granted for unemployment and employment service administration. Reference is made, however, to Sections 1030-33, Part IV, Volume I of Guide for State Employment Security Administration, which is an elaboration upon Section 1200 referred to above. These latter sections refer to a "State Practice," which is an established custom or usage, accepted and generally applied as an expenditure control in the fiscal administration of the State Government, as only one factor the Social Security Board will use in determining the necessity of expenditures by a State agency. Whether other factors give reason for the Board to deviate from the State Practice is solely within its province to decide.

Insofar as the procedure relative to rental contracts is concerned, we refer to Opinion No. 0-5524, a copy of which we enclose herewith. This opinion held that these rental contracts did not have to be made through the Board of Control, and this opinion has been

incorporated as a part of the program of the Employment Service of the Department of Labor. With reference to this question we again refer to the standards of the Federal agencies relative to rental of premises and note that these contracts must receive approval of the respective regional offices. It is specifically provided that the Bureau of Employment Security has the responsibility for determining the reasonableness and the necessity of the amounts requested for rental space and the regional office of the USES will concern itself primarily with the question of suitability of office space. (Part IV, Vol. 1, Guide for State Employment Security Administration, Section 2510) The requisites of these standards govern, and since they require that the leases be made otherwise than through a State agency similar to the Board of Control, the conclusion follows that the rental contracts of the Texas Employment Commission need not be made through the Board of Control.

With reference to the question concerning the necessity of the Texas Employment Commission purchasing its supplies, equipment, etc., through the State Board of Control, we refer to Opinion No. 0-3737, wherein it was held that the Commission did not have to follow the manner and method of purchasing supplies and equipment through the Board of Control which is applicable to other State departments when purchases are made in the manner and method as required by the rules, regulations, etc., of the Social Security Board. We have reviewed this opinion and subsequent federal regulations and have not found any regulation or law which would alter the conclusion reached therein.

After a study of the pertinent standards, rules and regulations, we have found that at the present time all of the interested Federal agencies have designated, pursuant to their standards and rules and regulations, the Fiscal Office of the Texas Employment Commission as the procurement officer who is charged with the responsibility of purchasing supplies and equipment.

It is true that the Bureau of Employment Security does have in its standards and in its suggested rules and regulations a "suggested process" by which the Commission could under certain circumstances designate the State Board of Control as its procurement officer. This portion of the rules and regulations and standards of performance issued by the Bureau of Employment Security, referred to above, could possibly be used by the Bureau as a basis for designating the State Board of Control as its procurement officer,

provided the State Board of Control met with all the standards promulgated by the Bureau of Employment Security. Whether or not this procedure is to be followed, and, if so, if the standards have been met, is for the Bureau of Employment Security to determine, and we cannot therefore say as a matter of law whether or not these purchases should be handled through the Board of Control.

The United States Employment Service of the Department of Labor has its own separate laws under which to make a separate determination as to the method to be followed by the State agency in making these purchases. This Federal agency, as a basis for its grant of funds to a State, has what is known as a Plan of Operation. One of the items in this Plan of Operation is its fiscal processes, of which procurement of supplies, equipment, etc., is a smaller part. We refer to Section 22.203 of the Plan of Operation submitted by the Texas Employment Commission to the Secretary of Labor. In that section is found Attorney General's Opinion No. 0-3737, which has been adopted by the Secretary of Labor and the United States Employment Service as its basis for the approval of the Texas Agency's operation insofar as the procurement of supplies, equipment, etc., are concerned.

As we have heretofore pointed out, these programs govern and require such purchases to be made other than through the Board of Control, and we again note that whether this procedure should be changed is within the discretion of the Secretary of Labor acting through the United States Employment Service. As the situation now presents itself, it is not necessary for the Commission to purchase its supplies, equipment, etc., through the Board of Control.

SUMMARY

It is not necessary for the Legislative Audit Committee to approve the Texas Employment Commission's budget for the expenditure of its administration costs which are paid from Federal funds.

At the present time it is not necessary for the Texas Employment Commission to purchase its supplies, equipment, etc., and make its rental contracts, through the State Board of Control, under the same regulations that apply to other State Departments, Institutions, and Agencies.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Robert O. Koch*
Robert O. Koch
Assistant

APPROVED

Joe R. Greenhill

ACTING ATTORNEY GENERAL

ROK: amm