



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 26, 1939

Hon. C. L. Kuykendall, Chairman
Board of Examiners
State Department of Education
Austin, Texas

Dear Sir:

Opinion No. O-783

Re: Whether general revenue warrants may be issued to meet current obligations of the Board of Examiners of the State Department of Education, the fund being exhausted at this time.

We are in receipt of your letter of May 9, 1939, wherein you outline in substance the following facts:

Fees accruing to the State Board of Examiners for the State Department of Education have been placed in the general revenue fund as collected. All of such fees collected during the current year and prior years have been expended and there are no such funds in the treasury at this time with which to pay operating expenses and salaries. You advise that, according to past experience, it is altogether probable that enough of such fees will come into the treasury between now and September 1, 1939, to meet the present obligations of the board and all such obligations which may accrue between now and September 1st. You request our opinion in response to the following two questions:

"(1) Is it not in order for the Comptroller's Department to continue to issue deficiency warrants in meeting the obligations of the Board of Examiners?

"(2) Is it in line with general practices

Hon. C. I. Kuykendall, May 26, 1939, Page 2

for salary warrants to be issued for services rendered several months prior to the date of the warrants?"

Article 2877, Revised Civil Statutes, reads as follows:

"The State Superintendent shall be authorized to appoint a State Board of Examiners, consisting of not less than three competent teachers, living in the State, to serve during his pleasure, and he may increase or decrease the number, as varying conditions may make necessary."

Article 2879, Revised Civil Statutes, provides in part as follows:

"....The county superintendent shall forward promptly to the State Superintendent, all papers of applicants applying for State certificates, these to be submitted to the State Board of Examiners, together with the reports of the county board of examiners, on a prescribed form furnished by the State Department of Education, with a fee of two dollars from the fee paid to him by each of the applicants applying for State certificates."

Senate Bill No. 138, being Chapter 504, General and Special Laws of Texas, Regular Session, 45th Legislature, is the general appropriation bill for the support and maintenance of the executive and administrative departments and agencies of the state government for the two year period beginning September 1, 1937. At page 1418 we find the following provision making appropriations for the maintenance of said Board of Examiners for said biennium:

"Board of Examiners Division

"It is hereby provided that amounts for the salaries of all persons engaged in the examination and certification of

Hon. C. I. Fuykendall, May 26, 1939, Page 3

applicants for teachers' certificates and for other expenses incident thereto shall never exceed the amounts of the prior year's balances of fees collected from applicants for certificates plus current fees collected, and that not exceeding the following amounts per year for salaries shall be paid to the following members and employees of said Board: \$3,000.00 to the Chairman-Member; \$2,750.00 to the College Examiner-Member; \$1800.00 to the Secretary-Member; \$1600.00 to the Certificate Clerk; and all other help at the rate not exceeding \$112.50 per month; also \$3,000.00 each year for maintenance, equipment, travel and contingent expenses; and said balances and fees are hereby appropriated for the purposes of paying said salaries and expenses for each of the two fiscal years ending August 31, 1938, and August 31, 1939."

It will be noted that neither Article 3877 nor any other statute fixes the salary of the State Board of Examiners nor does any general statute fix the salary of any employee of the board. All of such salaries and all expenses of the board are left to be provided for in such appropriation bills as are enacted for the purpose of enabling the board to function. The only appropriation made for the current biennium has been quoted above. Article 8, Section 6 of the state Constitution reads as follows:

"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assembling of the sixteenth Legislature."

If the above constitutional provision needs any

Hon. C. L. Kuykendall, May 26, 1939, Page 4

fortification it is provided in the case of *Lickle vs. Finley*, 44 SW 480, by the Supreme Court, wherein it is held that a warrant cannot issue for a salary provided by statute unless there has been an appropriation therefor. The appropriation for the Board of Examiners for the current fiscal year is of whatever sum that was on hand on September 1, 1938, plus fees collected during this fiscal year. No other sum is appropriated for such purpose and no amount in excess thereof can be paid from the state treasury. If the Comptroller should issue warrants for present salaries and expenses and it should develop that the fees which are collected for this account between now and September 1, 1939, should not be sufficient to pay such outstanding warrants, then it would follow that such unpaid warrants had been issued without authority of law and in contravention of the above constitutional provision. Therefore, the Comptroller can issue such warrants only upon peril of that development.

We do not believe that we can take judicial knowledge of whatever the general practice may be in connection with the matter inquired about in your second question. However, if warrants are not issued at this time, as the services are performed, there would be no legal inhibition against the subsequent issuance of such warrants, in the amount of the sums on hand from time to time during the balance of the fiscal year, for the payment of such services.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*

Glenn R. Lewis



GRL:AW

APPROVED:

George C. Mason
ATTORNEY GENERAL OF TEXAS