



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

July 21, 1964

Honorable C. H. Cavness
State Auditor
Austin, Texas

Opinion No. C-285

Re: Whether the Texas Youth Council is authorized, under the provisions of Article 3202a and/or Article 5143d, V.C.S., to fix and make charges for support and maintenance (excluding costs of education) for wards of the Waco State Home and the Corsicana State Home, and to seek and accept collection of such charges, and related questions.

Dear Mr. Cavness:

You have requested the opinion of this office as to whether the Texas Youth Council is authorized, under the provisions of Article 3202a and/or Article 5143d, Vernon's Civil Statutes, to fix and make charges for support and maintenance (excluding costs of education) for wards of the Waco State Home and the Corsicana State Home, and to seek and accept collection of such charges. You have also asked certain questions which are dependent upon an affirmative answer to the basic question. These questions will be answered as they arise in the body of the opinion.

Article 5143d, Vernon's Civil Statutes, is the Article which established the Texas Youth Council. This Article does not specifically grant to the Youth Council authority to determine or collect the costs referred to above. However, an examination of the course of legislative enactments in this area has led us to conclude that the Texas Youth Council has the power and duty to determine the costs involved in supporting such children as may be placed within the Council's custody at the Corsicana State Home or the Waco State Home, and the duty of collecting such costs (excluding cost of education) is placed upon the Council. We come to this conclusion for the following reasons:

(1) The Waco State Home and the Corsicana State Home were placed under the jurisdiction of the Texas Youth Council by Section 8 of Article 5143d, Vernon's Civil Statutes. Section 8 provides:

"The Texas Youth Council shall succeed to and be vested with all rights, powers, duties,

facilities, personnel, records and appropriations relating to the care, custody and control of children, now held by (a) the State Youth Development Council, including the Gatesville State School for Boys, the Gainesville State School for Girls, and the Crockett State School for Negro Girls; (b) the Board for Texas State Hospitals and Special Schools in respect to the Corsicana State Home and Texas Blind, Deaf and Orphan Home; and (c) the Department of Public Welfare with respect to the Waco State Home."

It must be noted that the Corsicana State Home was transferred to the Texas Youth Council from the Board for Texas State Hospitals and Special Schools; the Waco State Home was transferred from the Department of Public Welfare.

(2) The Board for Texas State Hospitals and Special Schools had control of the Corsicana State Home by virtue of Article 3174b, Vernon's Civil Statutes; the Department of Public Welfare had control of the Waco State Home by virtue of Article 3255b, Vernon's Civil Statutes. Neither of these Acts specifically granted power to determine or collect costs from children committed to these institutions. But each of these Acts did transfer to the respective agency all of the rights, powers and duties that were in the agency which had previous control of the institution.

(3) We are thus led back to the agency which had initial control of the Corsicana State Home and the Waco State Home. This agency was the State Board of Control. Under Article 3202a, Vernon's Civil Statutes, the Board of Control was authorized to fix the cost of supporting such children and charged with the responsibility of collecting these costs to the degree possible. This power and duty is thus one of those that was picked up by the language used in Section 8 of Article 5143d, and the effect is that the Texas Youth Council is included within the directions expressed in Article 3202a.

Your next question has to do with the situation wherein the Superintendents of the Waco State Home and the Corsicana State Home as "representative payees" are to receive Social Security payments on behalf of children who are resident in their respective Homes. You ask whether these Superintendents have legal authority to pay to the State a portion of the respective beneficiary benefits as reimbursement for the children's current support and maintenance, while they are institutionalized as is contemplated in the provisions of the Social Security Act. In this connection, we quote the pertinent provision of the Social Security Act, 42 USCA § 405 (j):

"When it appears to the Secretary that the interest of applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person."

With reference to this enactment, your letter of request stated that a District Manager of the Social Security Administration informed your office that Title II of the Social Security Act contemplated that a representative payee (individual or institution) ordinarily will use a portion of the beneficiary's benefits as reimbursement or payment on his current support and maintenance, and that in case of an institutionalized beneficiary such costs include reasonable expenses incurred by the institution for the beneficiary's care and support. In view of this statement and the terms of the quoted portion of the Social Security Act, it is the opinion of this office that funds received by the Superintendents in their capacity as representative payees may be legally paid to the State to the extent that such payments are for the use and benefit of the child who is the beneficiary of the funds.

You further ask " . . . whether any other benefits or allotments which, under the terms of their sources, could be legally used for the purpose would be subject to being applied on the Homes' cost of support and maintenance for the ward entitled to the benefit or allotment." To state the question in such a way is to provide the answer, particularly in view of our answer to the basic question, i.e., that the Texas Youth Council is charged with the power and responsibility of establishing and collecting costs for support and maintenance.

Your fourth question is as follows:

"Under present statutory provision, would the Superintendents of the State Schools for Delinquents, if acting as 'representative payees' as designated by the Social Security Administration, have legal authority to reimburse the State with a portion of the respective beneficiaries' benefits for their current support and maintenance if such amount to be paid had been so directed by the Juvenile Court under the provisions of Art. 2338-1, Sec. 13-a?"

The foregoing comments with regard to the Corsicana State Home and the Waco State Home also hold true for the children

committed to the State schools for delinquents, and any amounts that a juvenile court may direct to be paid by persons legally responsible for the child are applicable to the child's current support and maintenance.

SUMMARY

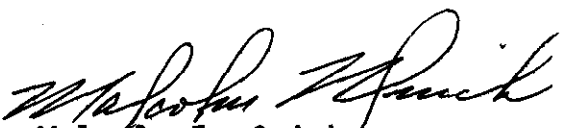
Under Articles 5143d and 3202a, V.C.S., the Texas Youth Council is authorized to establish charges for support and maintenance (excluding cost of education) for wards of the Waco and Corsicana State Homes, and to seek and accept collection of such charges.

The Superintendents of the respective Homes, acting as representative payees to receive Social Security payments on behalf of children resident in their respective Homes, are legally authorized to pay to the State a portion of the respective beneficiary payments as reimbursement for the children's current support and maintenance under the provisions of the Social Security Act, 42 USCA § 405 (j).

The Texas Youth Council has the same authority with respect to children committed to the State schools for delinquents, and any amounts that a juvenile court may direct to be paid by persons responsible for the child are applicable to the child's current support and maintenance.

Yours very truly,

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MLQ:ms

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APPROVED:

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
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