



**THE ATTORNEY GENERAL
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October 20, 1970

Hon. J. W. Edgar
Commissioner
Texas Education Agency
201 E. 11th Street
Austin, Texas

Opinion No. M- 709

Re: Whether the Legislature has appropriated funds to establish and maintain regional diagnostic facilities as authorized by Section 11.15 of the Texas Education Code, as amended, and related questions.

Dear Dr. Edgar:

You have requested an opinion concerning the above stated matter. We quote from your letter:

"Section 5 of House Bill 156 (Code provision 11.15), as amended by H.B. 432, 61st Leg., directs that the Commissioner of Education shall transmit to the 62nd Legislature an interim report on the status of the research on the problem of diagnosing and treating language-handicapped children, and (2) include in the report an itemized estimate of the money required to conclude research project satisfactorily by August 31, 1972. In implementation of this research program contemplated by the Act, especially Section 11.15(h), subsections (2) and (3) of Texas Education Code, which call for the establishment and operation of at least three regional experimental diagnostic facilities, and subsection (4) which authorizes the making of agreements toward the establishment thereof, we currently are confronted with a two-fold problem.

"First: Is there an appropriation to support the cost of establishment and operation of such regional facilities?

"Second: May subsection (4) of Section 11.15(h) T.E.C., be construed to empower the Texas Education Agency to contract with private firms, clinics or other acceptable associations for the performance of such experimental diagnostic treatment and program services, pursuant to Agency adopted regulations and/or guidelines?

"The Office of State Comptroller has apprised this Agency orally that in the absence of an Attorney General ruling it could not honor requests of this Agency for warrants in payment of costs for the establishment and operation of such regional experimental diagnostic facilities, because there is no language in House Bill No. 156, as amended, or any other statute, which provides that such research program shall constitute a part of and be financed from the Foundation School Program or its Fund; and secondly, because there is no estimate or specified amount appropriated to the Texas Education Agency from the General Revenue Fund for such regional and experimental diagnostic facilities purposes."

The gist of the first question appears to be whether there is a specific appropriation and prior authorization by the Legislature to pay the cost of the establishment and operation of the regional facilities mentioned in your request.

Section 44 of Article III, Texas Constitution, requires pre-existing law as a base for a specific appropriation. Austin National Bank v. Sheppard, 123 Tex.272, 71 S.W.2d 242 (1934).

Section 6 of Article VIII, Texas Constitution, requires that a specific appropriation be made before money is drawn from the treasury. The definition of "specific" as set forth in Section 6 was interpreted by the Texas Supreme Court in National Biscuit Company v. State, 134 Tex.293, 135 S.W.2d 687 (1940): (page 693)

"It is sufficient if the Legislature authorizes the expenditure by law, and specifies the purpose for which the appropriation is made."

In the instant case, House Bill No. 2, Acts 61st Legislature, 2nd Called Session, 1969, p. 890 (last appropriations act) provides:

"There is hereby appropriated for the biennium ending August 31, 1971 . . . to pay the State's part of the Foundation School Program as provided for in . . . House Bill No. 156, Chapter 451, . . . Acts of the 60th Legislature, Regular Session, 1967; . . .

"There is hereby specifically appropriated out of moneys in the General Revenue Fund not otherwise appropriated the amount necessary to pay the full amounts contemplated and provided by Senate Bill

No. 117 . . . should there be insufficient money in the fund created by said Senate Bill No. 117 . . . to carry out the purposes and provisions of Senate Bill No. 117 . . . House Bill No. 156 . . . supra, . . . The appropriation above shall be expended under the terms and provisions of said Senate Bill No. 117, supra, and the respective laws hereinabove cited . . . and by the same offices named therein respectively." (Emphasis added.)

House Bill No. 156 referred to in the above Act was codified as Article 2654-1c, Vernon's Civil Statutes, and later adopted in the Texas Education Code as Section 11.15. At the same time, as adopted in the Code it was amended by House Bill 432, Acts of the 61st Legislature, Regular Session, page 228 (1969). The net effect of this legislation is that House Bill 156, as referred to in the above quoted sections of the Appropriation Act, is very much alive, and in our opinion serves as existing law upon which a specific appropriation was made by the Legislature in the last Appropriation Act.

Your second question also requires an affirmative answer.

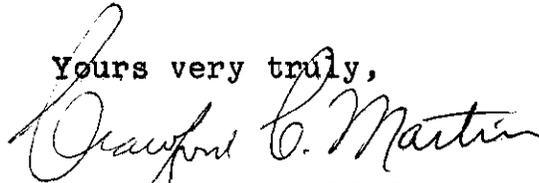
The authority and obligations of Section 11.15(h) of the Texas Education Code was not affected by House Bill 432, supra, and said Section authorizes and requires the Central Education Agency to establish a minimum number of experimental diagnostic facilities with advice from the advisory council. This same section of the Code, and also pertinent provisions of House Bill 432, specifically provide that the agency shall make necessary agreements and contacts to establish the diagnostic facilities, and further authority is given to seek assistance of both public and private concerns to develop a program for such facilities.

S U M M A R Y

Prior law exists upon which a specific appropriation was made to pay the cost of establishing and operating regional experimental diagnostic clinics as contemplated by the "Barnes-Wright Study Act", Article 2654-1c, Vernon's Civil Statutes.

Specific authority is given by Section 11.15(h) of the Texas Education Code for the Central Education Agency to contract with private firms to set up and operate the experimental diagnostic programs pursuant to Central Education Agency guidelines.

Yours very truly,



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