



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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October 30, 1974

The Honorable Carlos F. Truan  
Chairman, Committee on Human Resources  
House of Representatives  
Austin, Texas 78767

Opinion No. H- 437

Re: State share in aid to  
dependent children  
under Art. 3, Sec. 51-a  
of the Texas Constitution  
and Art. 695c, V. T. C. S.

Dear Representative Truan:

On behalf of the Committee on Human Resources of the House of Representatives you have asked our opinion on three questions having to do with the interrelationship of federal funds and state contributions for welfare payments under Article 3, Sec. 51-a, Texas Constitution and Article 695c, Sec. 4, V. T. C. S. Paraphrasing, they are:

(1) Does the Legislature have the authority to authorize a matching formula of 50% state dollars with 50% federal dollars for individual grants to recipients of Aid to Families with Dependent Children?

(2) Has the Legislature required any minimum percentage of matching federal funds for AFDC?

(3) Has the Legislature empowered the State Department of Public Welfare to prescribe policies by rules and regulations amending state statutes in order to acquire matching federal dollars to the fullest extent possible if the state statutes are not found to be in conflict with federal statutes and regulations?

Section 51-a, Article 3, in part, provides:

The Legislature shall have the power, by General Laws, to provide, subject to limitations herein contained, and such other limitations,

restrictions and regulations as may by the Legislature be deemed expedient, for assistance grants to and/or medical care for, and for rehabilitation and any other services included in the federal laws as they now read or as they may hereafter be amended, providing matching funds to help such families and individuals attain or retain capability for independence or self-care, and for the payment of assistance grants to and/or medical care for, and for rehabilitation and other services to or on behalf of:

- (1) Needy aged persons . . .
- (2) Needy individuals who are totally and permanently disabled . . .
- (3) Needy blind persons; . . .
- (4) Needy dependent children and the caretakers of such children.

The Legislature may prescribe such other eligibility requirements for participation in these programs as it deems appropriate.

The Legislature shall have authority to enact appropriate legislation which will enable the State of Texas to cooperate with the Government of the United States in providing assistance to and/or medical care on behalf of needy persons . . . provided that the maximum amount paid out of state funds to or on behalf of any needy person shall not exceed the amount that is matchable out of federal funds . . .

Provided further, that if the limitations and restrictions herein contained are found to be in conflict with the provisions of appropriate federal statutes, as they now are or as they may be amended to the extent that federal matching money is not available to the state for

these purposes, then and in that event the Legislature is specifically authorized and empowered to prescribe such limitations and restrictions and enact such laws as may be necessary in order that such federal matching money will be available for assistance and/or medical care for or on behalf of needy persons.

Article 695c, V. T. C. S., the Public Welfare Act of 1941, in Sec. 4 thereof, delineates the powers and responsibilities of the State Department of Public Welfare in the administration of welfare activities of the State. It provides, in Subsection (12):

Notwithstanding any other . . . law, the State Department of Public Welfare is authorized and empowered, . . . in order that Federal matching money will be available for public welfare programs . . . to extend the scope of the public welfare programs and the services provided . . . so as to include, . . . the entire range of public welfare assistance and/or services . . . as may be prescribed or authorized under Federal laws and rules and regulations, as they now are or as they may hereafter be amended.

. . .

If any portion of the public welfare laws or amendments thereto are found to be in conflict with the provisions of the appropriate Federal statutes, as they now are or as they may hereafter be amended, then and in that event, the State Department of Public Welfare is specifically authorized and empowered to prescribe by means of rules and regulations such policies as may be necessary in order that the State may receive and expend Federal matching funds to the fullest extent possible within the Constitutional provisions relating to public welfare and in accordance with the provisions of this Act and the Federal statutes as they now are or as they may hereafter be amended and within the limits of appropriated funds.

By amendments to the federal laws in 1972, most welfare programs based on federal matching funds were repealed as of January 1, 1974. P. L. 92-603, Sec. 303(a), p.1737 (1972). However, although the federal laws (42 U.S.C. Sec. 601, et seq.) providing for grants to states for aid to needy families with dependent children were amended [P. L. 92-603, Sec. 299E(e), p.1711, for example], that program of matching federal and state funds was not repealed.

Our answers to your questions are based on the law as it has existed both before and after the adoption of P. L. 92-603. To your first question we answer that the Legislature does have authority to enact legislation authorizing a matching formula of 50% state dollars with 50% federal dollars for grants for and to needy families with dependent children.

As to your second question, it is our opinion that Article 695c, Sec. 4(12), quoted above, was designed to take maximum advantage of the federal program. We are unable to discern any statutory limitation on the minimum percentage of matching federal funds for AFDC.

Your third question involves the rule-making authority of the Department of Public Welfare in instances where state and federal law do not conflict.

It is our conclusion that the Legislature has not attempted to empower the Department of Public Welfare to prescribe policies by rules and regulations altering the effect of state statutes if a conflict does not exist between state statutes and federal statutes or regulations which would deprive the state of federal funds were the conflict not resolved.

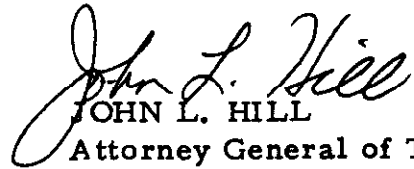
Your third question is narrow and this response is limited accordingly. We do not pass upon the scope or the validity of any delegation of power which the Legislature has made to the Department of Public Welfare.

#### S U M M A R Y

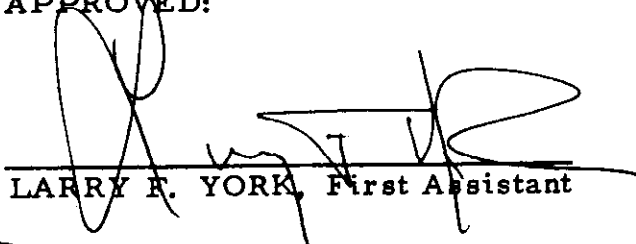
The Legislature has the authority to enact welfare legislation which utilizes a formula of matching dollar for dollar all federal funds available for individual grants to recipients of Aid to Families with Dependent Children. The Legislature has not attempted to empower

the Department of Public Welfare to prescribe policies by rules and regulations altering the effect of state statutes if a conflict does not exist between state statutes and federal statutes or regulations which would deprive the state of federal funds were the conflict not resolved.

Very truly yours,

  
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APPROVED:

  
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Opinion Committee