



THE ATTORNEY GENERAL OF TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

AUSTIN 11, TEXAS

November 1, 1955

Honorable Garland A. Smith, Chairman
Board of Insurance Commissioners
Austin, Texas

Letter Opinion No. MS-247

Re: Disposition of moneys received
by State Departments from the
sale of publications.

Dear Mr. Smith:

You have requested an opinion on whether Section 3, Article III of the current General Appropriation Act (House Bill 140, Chapter 519, Acts of the 54th Legislature, 1955, at page 1532) is a valid appropriation to the Board of Insurance Commissioners of the moneys received from the source set out in the rider. This section reads as follows:

"Section 3. Publication and Sale of Printed Matter. Any moneys appropriated under this Article for general operating, maintenance, miscellaneous, or contingent expenses, or specifically appropriated for printing, within the discretion of the head of each executive or administrative department or agency may be used for the publication and distribution of any notice, pamphlet, booklet, rules, regulations, or other matters of public interest, the subject matter of which is directly related to the statutory responsibilities of the respective department or agency.

"It is further provided that a charge may be made and collected for each such publication in an amount which will reasonably reimburse the State for the actual expense of printing it; but any such publication is to be furnished without charge to other State departments and agencies.

"It is also provided that moneys received and collected from such charges are hereby appropriated to the respective department or agency issuing the publications, for use during the fiscal year in which the receipts are collected. The State Comptroller is to credit such receipts to the appropriation item or items, from which the printing costs were originally paid."

In his "Interpretations Relating to Executive and Administrative Departments and Agencies Special Provisions" of the 1955-1957 Appropriation Act, issued on August 10, 1955, the Comptroller of Public Accounts made the following interpretation of this provision:

"Receipts derived from the sale of any notice, pamphlet, booklet, rules, regulations or other matter of public interest are appropriated and may be credited to the appropriation out of which the expense for such item was paid or could be paid. This revenue is appropriated for use during the year in which it is collected."

On August 19, 1955, the Comptroller issued a directive modifying his former interpretation in the following manner:

"This office is now of the opinion that only revenue, from the sale of notices, pamphlets, booklets, rules, regulations or other matter of public interest, in which there is a general statute setting the amount or authorizing the department to set the amount, is available for deposit to the departments appropriation or Special Fund. The above opinion is based on an interpretation of Attorney General Opinion O-3711.

"On all requests for deposit to appropriations or Special Funds, from the sale of notices, pamphlets, booklets, rules, regulations or other matters of public interest, this office will require a reference to the statute setting the amount or authorizing the department to set the amount to be charged for the item sold, before deposit will be made to an appropriation and/or special fund.

"Where a request for deposit of revenue from sales of printed items is requested and no statutory authority for the sale has been referred to on the request for deposit, the revenue will be deposited to the General Revenue Fund, and will not be credited to the departments appropriation account."

The Comptroller's interpretation is based on the propositions that the authority to charge for printed matter is a subject of general legislation which cannot be included in an appropriation act and that the money collected by a department in its official capacity from the sale of matter for which there is no general statutory authority is in the same status as unauthorized fees and other charges collected under color of office. We agree with these general propositions. However, we do not agree with the Comptroller's interpretation of Attorney General's Opinion O-3711 as holding that the Legislature cannot appropriate this

money to the department making the collection. In that opinion it was held that certain fees collected by the Board of Medical Examiners which were unauthorized by general law should be deposited to the General Revenue Fund rather than to the special fund set up for the deposit of authorized fees and charges and that the money was not available to the Board "since these fees have not been appropriated for expenditure by the Board." The latter holding was based on the fact that the Legislature had not made an appropriation of the money to the Board and not on the lack of power in the Legislature to make such an appropriation. Attorney General's Opinion MS-239 (1955) held that money collected under color of office is subject to appropriation to the same extent as money collected pursuant to express statutory authority. In the present instance, the Legislature clearly has provided for an appropriation of all money collected as charges for printed matter which is directly related to the statutory responsibilities of the respective department or agency where the charge is fixed at an amount which will reasonably reimburse the State for the actual expense of printing it. It is our opinion that this is a valid appropriation. You are therefore advised that during the current biennium all such money collected by your department is appropriated for its use during the fiscal year in which it is collected.

You have stated that "in connection with its public duties, as prescribed by law, the Board of Insurance Commissioners publishes and distributes various law books, lists, reports, bulletins, schedules, notices, pamphlets, rules and regulations, and other matters of public interest for which charges are made and collected." You have not asked us to rule on whether there is general statutory authority, express or implied, to charge for the various kinds of publications or whether the Comptroller is correct in his view that the charges are unauthorized unless there is a general statute expressly authorizing the charge. This opinion is not to be understood as an assent to an inflexible rule that a department has no authority to charge for printed matter unless the charge is expressly authorized by general law. All we are called upon to decide in this opinion is whether, assuming that the Comptroller is correct in classifying a charge as a "color of office" collection, the money is nevertheless available to the department for expenditure under the current appropriation provisions.

A further question may arise with respect to the accounting procedure set out in Section 3. We are not in accord with the Comptroller's view that the entire revenue from publication charges which are not authorized by a general statute must be deposited to the General Revenue Fund. We do agree that the Legislature in an appropriation act cannot provide for the crediting of charges in excess of the publication

costs to a permanent special fund, whereby the special fund would receive the benefit of the unappropriated or unexpended amounts after the expiration of the appropriation period. However, we are of the opinion that a special fund may be reimbursed for the printing costs paid therefrom unless the general law specifically requires or authorizes the publication and expressly or impliedly negatives the department's authority to charge for it. It is assumed in this opinion that your department is not making a charge for any printed matter of that nature.

In the present case, the Legislature has appropriated only the money received from charges which are made in accordance with the second paragraph of Section 3; that is, charges which will reasonably reimburse the State for the actual expense of printing. If it is shown that the charge made by your department is not in excess of reasonable reimbursement for printing expense, the money should be credited as directed in the last sentence of Section 3 and is appropriated to your department for use during the fiscal year in which the receipts are collected. If the charge is in excess of this amount, the excess is not appropriated under Section 3 and should be deposited to the General Revenue Fund unless the general law directs that it be deposited to a special fund.

APPROVED:

John Reeves
Reviewer

J. A. Amis, Jr.
Reviewer

Will D. Davis
Special Reviewer

Davis Grant
First Assistant

John Ben Shepperd
Attorney General

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By *Mary K. Wall*
Mary K. Wall
Assistant