



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

November 23, 1955

Honorable Earl Rudder Letter Opinion No. MS-248
Chairman
Veterans' Land Board Re: Disposition of collections made
Austin, Texas by the Veterans' Land Board under
 Section 10 of House Bill 341 of
 the 54th Legislature.

Dear Mr. Rudder:

You have requested an opinion on the disposition of fees collected under the provisions of Section 21 of Article 5421m, Vernon's Civil Statutes, as amended by Section 10 of House Bill 341, Acts of the 54th Legislature, 1955, chapter 520, page 1597, 1603, which read as follows:

" . . .

"The Board is hereby authorized and required to collect a fee of Fifty Dollars (\$50) from each applicant under Section 16 of this Act, which fee shall be held in a trust fund to be used for the purpose of payment for examination of title, recording fees and other allied expenses, and any unused balance remaining after payment for such items shall be deposited in the State Treasury and credited to the Veterans Land Board Special Fund.

"The Board is further authorized and required to charge and collect for the use of the State the following fees for the processing and servicing of purchase applications and Contracts of Sale, and Purchase and matters incidental thereto:

1. Appraisal and service fee for each application under Section 17 of this Act \$50.00

. . .

"All moneys received by payment of the above fees shall be deposited in the State Treasury and credited to the Veterans Land Board Special Fund, and said Fund is hereby appropriated to the Veterans Land Board to be used as it deems necessary to pay any salaries, increasing of salaries,

Hon. Earl Rudder, page 2 (MS-248)

or travel expenses, of the employees of the Veterans Land Board, or employees of the General Land Office doing work with the Veterans Land Program, provided, however, that such salaries or expenses, shall be in line with the salaries or expenses paid to similar employees of other state departments performing similar duties."

You have asked the following questions:

(1) Whether any unused portion of the \$50 fee charged an applicant under Section 16 of the Act can be refunded to the applicant if his particular transaction fails to be closed for any reason.

(2) Whether the Board has the authority to allocate specific portions of the \$50 appraisal and service fee for an application under Section 17 of the Act to appraisal costs, application processing costs, and servicing costs of the Contract of Sale and Purchase in those instances where the transaction fails to be consummated, and to refund the unused portion of the fee to the applicant in an amount dependent upon the progress the application has made at the time it is cancelled.

Section 21 of Article 5421m prescribes the fees to be charged by the Board; states the purpose of the fees; states how the fees are to be used; and prescribes the disposition of all money collected as fees.

It is noted that the fees in question are required to be charged and collected from each applicant rather than from each successful purchaser. The Act provides that any unused balance of the fee collected from applicants under Section 16 shall be deposited in the State Treasury and credited to the Veterans' Land Board Special Fund. It also provides that all money received by the payment of the fees for applications under Section 17 shall be deposited in the State Treasury and credited to the Veterans' Land Board Special Fund. There is no provision in Article 5421m authorizing a refund of such money.

The Court stated in State v. Snyder, 66 Tex. 687, 18 S.W. 106, 109 (1886):

Hon. Earl Rudder, page 3 (MS-248)

"The constitution provides that 'no money shall be drawn from the Treasury but in pursuance of specific appropriation made by law.' As was said in *Treasurer v. Wygall*, 46 Tex. 465: 'The key that unlocks the state treasury is an act of the legislature, directing the thing to be done which is demanded, and not the judgment of a court, founded on equitable consideration, reaching beyond and changing the terms of the law in the disposition of property.'"

Since Section 21 of Article 5421m requires the fees to be collected and to be deposited in the State Treasury and does not provide for a refund to unsuccessful applicants, you are advised that such money can not be refunded. Article VIII, Section 6 of the Constitution of Texas.

SUMMARY

Section 21 of Article 5421m, Vernon's Civil Statutes, requires the Veterans' Land Board to collect and deposit certain fees prescribed therein from each applicant, and such fees cannot under existing law be refunded to any applicant.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Elbert M. Morrow
Reviewer

Mary K. Wall
Reviewer


L. W. Gray
Special Reviewer

Davis Grant
First Assistant

John Ben Shepperd
Attorney General

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By 
John Reeves
Assistant