



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-1182

Re: Is the Labor Commissioner re-
quired to use the balance of
\$5,000.00 in the Boyley Inspec-
tion Fund as a payment against
the \$20,000.00 General Revenue
Appropriation?

We acknowledge receipt of your letter of July 21,
1936, in which you request the opinion of this department
relative to Section 18 of House Bill No. 352, Acts of the
45th Legislature. In this connection we quote the body
of your letter for the purpose of identifying the request:

"Section 18 of House Bill No. 352,
Acts of the Forty-fifth Legislature, reads,
as follows:

"Section 18. There is hereby appropriated
out of the General Revenue Fund of the State
of Texas the sum of Twenty Thousand Dollars
(\$20,000.00), or so much thereof as may be
necessary not otherwise appropriated, for
the purposes of carrying out the provisions
of this Act; said amount that may be ex-
pended out of this appropriation shall be
replaced and refunded to the General Revenue
Fund by the Commissioner from fees collected
under the terms of this Act during the first
year of the operation of this Act. However,
any monies remaining in said fund at the end
of the fiscal year ending August 31, 1937,
are re-appropriated to the use of the Commis-
sioner for the purpose of carrying out the

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provisions of this Act. Any unexpended balance or funds remaining in the "State Boiler Inspection Fund" at the end of the fiscal year ending August 31, 1958, not exceeding Ten Thousand Dollars (\$10,000.00) is hereby appropriated for the use of the Commissioner to carry out the purposes of this Act, and for each succeeding fiscal year any unexpended balance remaining in the "State Boiler Inspection Fund" not exceeding Ten Thousand Dollars (\$10,000.00) shall be carried forward for the purpose of the enforcement of this Act, provided, however, any amount remaining in said fund in excess of Ten Thousand Dollars (\$10,000.00) at the end of any fiscal year after 1958 shall revert to the General Revenue Fund of the State of Texas.

"During the first year this Act was in operation the Commissioner of Labor collected approximately \$15,000.00, ten thousand dollars (\$10,000.00) of which was placed into the State Treasury as a payment against the \$20,000.00 appropriated out of the General Revenue Fund, under Section 18 as above quoted. The other \$5,000.00 was used by the Labor Commissioner for the administration of the Act.

"There is a balance in the fund, of the fees collected for the second year, of approximately \$5,000.00.

"Is the Labor Commissioner required to use this balance now in the fund as a payment against the \$20,000.00 General Revenue Appropriation? If not, then is the official who was Commissioner at that time required to apply the \$5,000.00 collected as fees during the first year of the life of the Act, which he has used for administrative purposes, against the retirement of the \$20,000.00 General Revenue Appropriation?"

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In answer to your first question we advise you that the Labor Commissioner is not required to use the balance now in the State Boiler Inspection Fund as a payment against the \$20,000.00 General Revenue Appropriation for the reason that Section 18 of House Bill 352 specifically states that such amount as may be expended out of the appropriation shall be replaced and refunded to the General Revenue Fund by the Labor Commissioner from fees collected under the terms of the Act during the first year of its operation. If the statement in your letter is correct the balance now on hand in the fund does not contain any fees collected during the first year of the operation of House Bill 352.

In regard to your second question, we are not advised sufficiently on the fact situation to determine whether or not any liability exists, and if such liability does exist, whether it would rest on the Comptroller or the Labor Commissioner. If you will advise us further in this connection, and outline fully the details of the transactions, we shall be glad to comply with your request.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Ross Carlton
Ross Carlton
Assistant

RC:FL

APPROVED AUG 12, 1939

Gerardo Mann
ATTORNEY GENERAL OF TEXAS

