



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. W. A. Davis, M. D.  
State Registrar  
State Board of Health  
Austin, Texas

Dear Sir:

Opinion No. 0-1394  
Re: Special fund set up by Section  
2, House Bill 613, 46th Legis-  
lature.

By your letter of September 8th, you ask the  
opinion of this department upon the following question:

"Please advise me if under the provisions  
found in Section 2, H.B. 613, 46th Legislature,

'All such fees shall be kept by the State  
Treasurer in a special and separate fund  
to be known as the Vital Statistics Fund,  
and the amounts so deposited in this Fund  
may be used for defraying expenses incur-  
red in the enforcement and operation of  
this Act.'

the above fund may be used for paying the salary  
for full or part time persons employed in the  
Bureau of Vital Statistics to perform the duties  
placed on the Bureau of Vital Statistics by  
other provisions of the Vital Statistics Law."

In the Departmental Appropriation Bill passed by  
the 46th Legislature, under the appropriation for the Board  
of Health, there appears a division styled "Bureau of Vital  
Statistics," under which various salary items are provided.  
No expense items, other than for salaries, are there provid-  
ed, but at the end of the appropriation for the Department  
of Health, appear various items available for expenses of  
the entire Department of Health.

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The General Rider to the Departmental Appropriation Bill provides:

"(b) The appropriations herein provided are to be construed as the maximum sums to be appropriated to and for the several purposes named herein, and the amounts are intended to cover and shall cover the entire cost of the respective items and the same shall not be supplemented from any other source; and, except as otherwise provided, no other expenditures shall be made, nor shall any other obligations be incurred by any department of this State, ..."

"Except as otherwise provided, whenever, by virtue of the provisions of this Act, items are to be paid out of fees, receipts, special funds or other funds available for use by a department, it is the intention of the Legislature to limit expenditures out of said fees, receipts, special funds or other available funds, to the purposes and in the amounts itemized herein, and it is so provided. If, however, the amount of the fees, receipts, special or other available funds herein referred to are more than sufficient to pay the items herein designated to be paid therefrom, the department to which the said fees, receipts, special funds or other available funds are appropriated may, if necessary to adequately perform the functions of such department, use any portion of said surplus fees, receipts, special funds or other available funds," by obtaining the permission of the Limitation of Payments Board in the manner provided therein.

The effect of these provisions is to limit the amount of money to be spent for particular items for which the Legislature has made specific provision to the amount provided therefor in the departmental appropriation bill, to deny the authority to supplement any particular item for which provision has been made, from any source, and to limit the authority to the department to incur any other expenditures to such additional expenditures as are "otherwise provided" for in the departmental appropriation bill.

The departmental appropriation bill, in section 3 of the general rider, provides that "in the event the

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statutes of the State of Texas provide that any amounts, fees or funds herein appropriated (are) to be paid out of local or special fees or funds, that the same be so paid out of said local or special fees or funds instead of being paid out of the General Revenue Fund." (parenthetical insertion ours). H. B. 613, however, does not contemplate the financing of such work exclusively from such special fund, but, in our opinion, is intended to permit the application of the special fund toward the cost of operating this governmental service, with the deficiency, if any, to be supplied from the General Fund. It follows that the special fund is to be applied to the payment of the items provided in the departmental appropriation bill for the Bureau of Vital Statistics. It is only in the event that an actual surplus exists in such fund, over and above the sum necessary to pay such items provided for the fiscal year, that, with the permission of the Limitation of Payments Board, the excess or surplus may be used for necessary expenses of such Bureau, including the employment of additional help, full or part time.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *R. W. Fairchild*  
R. W. Fairchild  
Assistant

RWF:pbp

APPROVED SEP 14, 1939

*George M. Mason*  
ATTORNEY GENERAL OF TEXAS

