



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Marvin Hall, Commissioner
Board of Insurance Commissioners
Austin, Texas

0-1396

Dear Sir: Attention of Mr. J. Blake Timmons

Opinion No. 0-1396

Re: What constitutes a surplus in the
Fire Insurance Division Fund?

Your request for an opinion on the above stated question has been received by this department.

Your letter reads in part as follows:

"On September 1, 1959, the Fire Insurance Division of the Treasury showed a net cash balance of \$99,910.75. Under the terms of the General Appropriation Bill, the maximum expenditures for the period September 1 to December 31, 1959 is \$50,210.00. This leaves a balance of \$49,700.75 in the Fire Insurance Division Fund now available after all the expenditures for the remainder of the budgetary year, which ends on December 31, 1959, have been paid.

"Would not this balance constitute a 'surplus' within the meaning of that term in Limitation of Payments clause of Senate Bill 427, the General Departmental Appropriation Act of the 45th Legislature, and therefore be subject to the jurisdiction of the Limitation of Payments Board, therein created?"

Article 4902, Revised Civil Statutes, as amended, reads as follows:

"The State of Texas shall assess and collect an additional one and one-fourth per cent of the gross fire and/or lightning, and/or tornado, and/or windstorm, and/or hail insurance premiums of all companies doing the business

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of fire or lightning or tornado or wind storm or hail insurance in this State according to the reports made to the Board of Insurance Commissioners as required by law; and said taxes when collected shall be placed with the State Treasurer in a separate fund which shall be known as the Fire Insurance Division Fund, which Fund shall be kept separate and apart from other funds and moneys in his hands; and said special Fund or so much thereof as may be necessary shall be held and expended for the purpose of carrying out the provisions of this Chapter; and should there be an unexpended balance at the end of any year, said balance shall remain in said Fund and the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in said Fund in the Treasury, will be sufficient to pay all expenses for the current year, and not exceed the amount necessary to pay all necessary expenses of maintaining the Fire Insurance Division of said Board, so that no deficit shall occur in said Fund, which funds shall be paid out upon requisition made out and filed by a majority of the Commission, when the Comptroller shall issue warrants therefor. The taxes levied and assessed by this Section shall be independent of and in addition to all other taxes now imposed, or which may hereafter be imposed by law, against any company, mentioned herein."

Article 4927, Revised Civil Statutes, reads as follows:

"The president or vice-president and secretary of each fire, marine or inland insurance company doing business in this State, annually, on the first day of each year, or within sixty days thereafter, shall prepare under oath and deposit with the Commissioner a full, true, and complete statement of the condition of such company on the last day of the month of December preceding."

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Paragraph 4, page 34, of Senate Bill No. 427, Acts of the 46th Legislature, reads as follows:

"Provided that the foregoing appropriations for the Fire Division shall be paid out of revenues obtained from tax on gross premiums of insurance companies in accordance with the existing laws, except the foregoing appropriations for fire escape inspectors and their expenses, which shall be paid out of the General Revenue Fund.

"For the purpose of re-printing the Texas General Basis Schedules of fire and windstorm insurance rates as provided in Article 4882 of the Revised Civil Statutes, and other matters incident thereto, there is hereby appropriated for the fiscal years ending August 31, 1940 and August 31, 1941, so much of the assessments collected under Article 4902, and any balances remaining in the Fire Insurance Division Fund at the end of any fiscal year, or so much thereof as may be necessary, for carrying out the laws of this State with regard to these schedules."

Regarding limitation of payments, Senate Bill 427, supra, page 147, provides:

"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 out of 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 said department, use any portion of said surplus fees, receipts, special funds or other available funds; provided

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however, that before doing so the head of such department shall, under oath, make application, jointly, to the Governor, the Attorney General and the State Treasurer setting forth in detail the necessity for using such surplus fees, receipts, special funds or other available funds and itemizing the purposes for which the same are to be used. Unless the application is approved by at least two of the three persons aforementioned, the surplus fees, receipts, special funds or other available funds shall not be expended. Any item set out in the application can be deleted by decision of a majority of the three persons aforementioned. All applications which are approved or denied must be signed by those voting to approve or deny same. Said applications, after approval or rejection, shall be filed with and retained by the State Auditor for a period of six months after the expiration of the biennium ending August 31, 1941, and shall remain open to public inspection during said period. All surplus fees, receipts, special funds, or other available funds on hand at the end of each year of the biennium shall revert to the General Revenue Fund of this State unless otherwise prohibited by law, or unless otherwise provided herein. No salary paid additional employees shall exceed the amount herein appropriated for similar positions. All disbursements shall be made on warrants issued by the Comptroller on the State Treasury."

Article 12, Revised Civil Statutes, reads as follows:

"The fiscal year of the State shall terminate on the thirty-first day of August of each year, and appropriations of the State government shall conform thereto. All officers who are required by law to report annually or biennially to the Legislature or Governor shall close their accounts on that date, and

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as soon thereafter as practicable shall prepare and compile their respective reports."

By virtue of the above quoted statute, all appropriation of the State Government must conform to the fiscal year therein designated and not to the budget year of any State department.

Article 4902, supra, specifically provides that:

"....said special Fund or so much thereof as may be necessary shall be held and expended for the purpose of carrying out the provisions of this Chapter; and should there be an unexpended balance at the end of any year, said balance shall remain in said Fund and the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury, together with said unexpended balance in said Fund in the Treasury, will be sufficient to pay all expenses for the current year, and not exceed the amount necessary to pay all necessary expenses of maintaining the Fire Insurance Division of said Board, so that no deficit shall occur in said Fund, which funds shall be paid out upon requisition made out and filed by a majority of the Commission, when the Comptroller shall issue warrant therefor...."

The Legislature recognizes the distinction between the year for collecting funds by the various state departments which is usually the calendar year and the year for expenditure of such funds which is the fiscal year. Surplus funds within the meaning of that term as used in the Limitations of Payments clause of Senate Bill No. 427, Acts of the 46th Legislature, only refer to surpluses with respect to items appropriated for expenditure by the department for the fiscal year.

Therefore, you are respectfully advised that it is the opinion of this department that it is only in the event that there may be in the special fund an amount of

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money more than is sufficient to pay the items appropriated for the department for the fiscal year that there exists a surplus subject to the jurisdiction of the Limitations of Payment Board.

Trusting that the foregoing fully answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

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APPROVED SEP 29, 1969

George B. Mann

ATTORNEY GENERAL OF TEXAS

