



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable C. L. Kuykendall, Chairman  
Board of Examiners  
Department of Education  
Austin, Texas

Dear Sir:

Opinion No. O-1437

Re: Special fund for Board of  
Examiners Division, Depart-  
ment of Education.

We are in receipt of your letter of September 13,  
1939, which is, in part, as follows:

"If you will refer to page fifty-six of Senate Bill Number 427, under Board of Examiners Division, you will find this wording: 'Subject to the limitations set forth in the provisions appearing at the end of this act, all balances now on hand and all current fees collected from applicants for teachers' certificates are hereby appropriated for the purpose of paying all of the salaries and expenses of this division, as itemized, for the fiscal years ending August 31, 1940 and August 31, 1941.' It seems to me that this provision makes it necessary that our fees be deposited in a special fund, rather than in the general fund as we find them at the present time. Under the present set-up, certificate fees are placed in the general fund and all warrants drawn in favor of the Board of Examiners Division are paid from the general revenue.

"I shall appreciate an opinion concerning this matter at your earliest convenience."

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The following statutory provisions relate to the collection of the fees to which you refer:

"Article 2879:-- Any person desiring to be examined for a teacher's certificate shall make application to the County Superintendent, \* \* \*. After investigation, the County Superintendent shall give the applicant a written recommendation to the County Board of Examiners, requiring them to examine the applicant for a certificate \* \* \*; but no person shall receive such recommendation without first depositing with the County Superintendent the sum of \$4.00 as an examination fee, and the recommendation given by the County Superintendent shall show the receipt of said fee. The County Board of Examiners shall not permit any person to enter the examination who does not first present the written recommendation of the County Superintendent. \* \* \* \* The County Superintendent shall forward promptly to the State Superintendent, all papers of applicants applying for State Certificates, these to be submitted to the State Board of Examiners, \* \* \* with a fee of \$2.00 from the fee paid to him by each of the applicants applying for State Certificates.

"Article 2881:-- The State Board of Examiners shall, at their next meeting after receipt of said papers and reports, together with the fees, examine the papers and shall make a report to the State Superintendent \* \* \* \*.

"Article 2888:-- \* \* \* The State Board of Examiners in the State Department of Education shall on application of institutions in Texas, to be recognized as junior colleges, \* \* \* \* make investigation \* \* \* \* and shall make recommendations \* \* \* \*. Any school applying for approval under this act shall pay a fee of \$25.00. Each applicant for teachers' certificate based on college credentials from Junior Colleges, \* \* \*, shall pay a fee of \$1.00 to cover the expenses of inspection and

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standardization of approved colleges and of recording and issuing the certificate.

"Article 2891a:-- Any person holding a teachers' certificate \* \* \* \* shall have the right to have such certificate revived and continued in force for a period of one year by taking three courses or subjects and passing in same \* \* \* \*. Upon successfully passing such three courses or subjects, \* \* \* \* such teacher's certificate \* \* \* \* upon payment of \$1.00 by the holder, shall be renewed and continued for one year \* \* \* \*."

Article 2889a also provides for fees for special and emergency certificates.

In conference opinion No. 3012, dated February 3, 1938, addressed to the Honorable Tom C. King, State Auditor, appearing in Attorney General's Reports 1936-1938, page 137, this Department ruled that the fees to which you refer are "state funds" or "public moneys" and are required to be deposited in the State Treasury to be withdrawn upon warrants properly drawn by the Comptroller. It was also held in that opinion, in answer to the direct question, that such fee should be deposited to the account of the General Revenue Fund, and not in any special fund. In answering the questions propounded the Department considered the provisions of the Departmental Appropriation Bill 45th Legislature, General and Special Laws of Texas, 1937, Regular Session, page 1418, which reads as follows:

"Board of Examiners Division.

"It is hereby provided that amounts for the salaries of all persons engaged in the examination and certification of applicants for teachers' certificates and for other expenses incident thereto shall never exceed the amount of the prior year's balances of fees collected from applicants for certificates plus current fees collected, and that not exceeding the following amounts per year for salaries shall be paid to the following members and employees of said Board: \$3,000.00 to the Chairman-Member; \$2,750.00

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to the College Examiner-Member; \$1,800.00 to the Secretary-Member; \$1,600.00 to the Certificate Clerk; and all other help at the rate not exceeding \$112.50 per month; also \$3,000.00 each year for maintenance, equipment, travel and contingent expense; and said balances and fees are hereby appropriated for the purposes of paying said salaries and expenses for each of the two fiscal years ending August 31, 1938, and August 31, 1939."

The current departmental appropriation for the Board of Examiners Division, Department of Education, Senate Bill No. 427, 46th Legislature, contains an itemized appropriation for salaries and other items of expense with the provision that such items shall be "Paid out of Board's Fees". The Bill then contains the following rider:

"Subject to the limitations set forth in the provisions appearing at the end of this act, all balances now on hand and all current fees collected from applicants for teachers' certificates are hereby appropriated for the purpose of paying all of the salaries and expenses of this division as itemized for the fiscal years ending August 31, 1940, and August 31, 1941."

We find no provision in the general law which would authorize or require the Comptroller to create a special fund for the fees collected by the Board of Examiners Division, nor do we think that the fact that such fees are appropriated to the division would authorize or require the creation of a special fund. Insofar as is material here the appropriation for the Board of Examiners Division by the 45th Legislature which was considered in our former conference opinion, is substantially the same as that made by the 46th Legislature.

It is our opinion that the Comptroller is not authorized or required to deposit the fees collected by the Board of Examiners Division of the Department of Education in a special fund, but such fees should be deposited in the general revenue fund, and withdrawn upon proper warrant issued by the Comptroller.

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Cecil C. Cammack*  
Cecil C. Cammack  
Assistant

CCC:RS

APPROVED OCT 13, 1939

*Gracib. Thoma*  
ATTORNEY GENERAL OF TEXAS

