



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

State Department of Education
Austin, Texas

Gentlemen:

Attention E. H. Hereford
College Examiner

Opinion No. 0-1614
Re: (a) Traveling expenses of
Board of Examiners of the
State Department of Educa-
tion; (b) Jurisdiction of
Limitations of Payments
Board over fees in excess
of itemized expenditures
appropriated by the Legis-
lature.

This will acknowledge receipt of your letter of October 21, 1939, wherein you state that the Board of Examiners of the State Department of Education is financed by fees collected, that this year there is no travel expense provided for this work, and ask the question of this Department upon the following questions:

"1. May we use the excess money in this fund to pay for travel which is a necessary expense?"

"2. Does the Limitations of Payments Board have jurisdiction over the fees which are in excess of the itemized expenditures?"

Senate Bill No. 427, passed by the Forty-sixth Legislature, appropriates various items for the Board of Examiners Division of the State Department of Education. This appropriation is headed "Board of Examiners Division (paid out of Board's fees)", and following the appropriation there appears the following paragraph:

"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 teacher's 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."

There is no item provided for traveling expenses. The Legislature has appropriated the fees collected by the Board of Examiners Division only for the purpose of paying the salaries and expenses of the Division itemized in the appropriation bill by the Legislature. Since no item for traveling expenses is provided, there is no appropriation under which excess fees may be used to defray necessary traveling expenses of the Board of Examiners Division.

In answer to your second question, you are advised that it is the opinion of this Department that the Limitations of Payments Board has no jurisdiction over the Board of Examiners fees which exceed the amount necessary to pay the items specifically appropriated therefrom by the Legislature. Article 2379, Revised Civil Statutes, provides that applicants for teacher's certificates shall submit with their application to the State Board of Examiners a fee of Two Dollars (\$2.00), and Article 2391a provides that a person holding a teacher's certificate may have the same renewed upon the payment of the fee of One Dollar (\$1.00), under certain circumstances, and Article 2389a also provides for fees for special and emergency certificates, but in none of these Articles of the statute do we find any language indicating an intention on the part of the Legislature to dedicate or devote the fees to the use and benefit of the State Department of Education or the Board of Examiners Division thereof, for the purpose of defraying necessary expenses of its administration. In our opinion No. 0-1437, addressed to the Honorable C. L. Kuykendall, Chairman of the Board of Examiners, under date of October 13, 1939, and written by Assistant Attorney General Cecil C. Cammack, this Department held that the Comptroller is not authorized or required to deposit the fees collected by the Board of Examiners Division of the Department in a special fund, but that such fees should be deposited in the general revenue fund. And in our Conference Opinion No. 3082, construing the limitation of payments clause of Senate Bill 427, Regular Session, Forty-sixth Legislature, we held as follows:

"Answering your second question specifically, therefore, we are of the opinion that the authority of the Board relates only to those surpluses existing in funds dedicated or devoted to the uses of a particular department, where an appropriation of such surplus in such dedicated funds to the particular department is not to be found elsewhere than in the Limitation of Payments Clause."

Since the statutes providing for the collection of fees by the Board of Examiners Division of the State Board of Education do not dedicate or devote those fees to the use and benefit of that department of the State Government, the Limitation of Payments Board has no jurisdiction over any supposed excess or surplus existing therein.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By R. W. FAIRCHILD (Sgd.)
Richard W. Fairchild
Assistant

RWF:LM

APPROVED OCT. 30, 1939

GERALD C. MANN

ATTORNEY GENERAL OF TEXAS

APPROVED
Opinion Committee
By B.W.B.
Chairman