



**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. 0-1980
Re: Applicability of Limitation
of payments clause in Senate
Bill 427, Acts of the 46th
Legislature, to special rider
appropriating fees collected
under House Bill 547, 42nd
Legislature, to the Comptroller
for his use in making audit as
provided in said Act.**

**By your letter of February 19, 1940, you ask the
opinion of this Department upon the following matter:**

**"Subsection (b) of Section 3 of House Bill
547, as amended by House Bill No. 8, of the 3rd
Called Session of the 44th Legislature, reads,
as follows:**

**"(b) All taxes, penalties and interest due
any producer shall constitute a preferred lien
on all of his wells, leases, and other property
devoted to or used in his business as producer,
not exempt under the Constitution, and if any
producer shall fail to remit the proper taxes,
penalties and interest due, or any of them, the
Comptroller may employ auditors or other persons
to ascertain the correct amount due, and the pro-
ducer shall be liable, as an additional penalty,
for the reasonable expenses or the reasonable
value of such services of representatives of the
Comptroller, incurred in such investigation and
audit; provided, that all funds collected for
audits and examinations shall be placed in a
special fund in the Treasury and shall constitute
a revolving fund which may be used from time to**

time by the Comptroller in making such audits in addition to the general appropriation made for such purpose, and all of said funds to be placed in said special fund are hereby appropriated for such purpose.'

"The current appropriation bill; that is, Senate Bill No. 427, carries a rider which reads:

"'Subject to the limitations set forth in the provisions appearing at the end of this Act, any fees collected for audits and examinations as provided in House Bill 547, passed by the Regular Session of the Forty-second Legislature, and any amendments thereto, and any balances in the "Natural and Casinghead Gas Audit Fund" are hereby appropriated to the Comptroller of Public Accounts to be used in making audits as provided in said Act. The one-half of one per cent appropriated herein shall be transferred to the enforcement fund before the receipts are allocated to the proper funds.'

"This department desires your opinion as to whether the money appropriated under the foregoing House Bill for the use and benefit of the Comptroller's Office comes under the general rider in the current appropriation bill, known as 'Limitation of Payments.'"

We find in the rider which you quote a specific appropriation of these fees to your department for the accomplishment of a definite purpose. We have heretofore held that the Limitation of Payments clause does not apply to those funds which are appropriated either by specific itemization of purpose and amount, or by special rider appropriating all of the fund to such purpose, but only to the instance where the appropriation of the fund is not to be found elsewhere than in the Limitation of Payments clause. See our Conference Opinion No. 3082, addressed to the Honorable Lee O'Daniel, Governor of Texas, in which we construed the Limitation of Payments clause in Senate Bill 427, Regular Session, Forty-sixth Legislature.

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Your question is therefore answered in the negative.

Yours very truly
ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild
Assistant

RWF::LM

APPROVED FEB 27, 1940
(s) Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
opinion committee
By BWB
chairman