



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. 0-3833
Re: Whether House Bill No. 1011,
Forty-seventh Legislature,
is a valid appropriation.

In your letter of July 30, 1941, you request our
opinion in response to the following questions:

"House Bill No. 1011, Regular Session of
the Forty-seventh Legislature, appropriates
\$300,000.00 for the purpose of providing per-
manent funds or revenue for the Fireman's Re-
lief and Retirement Fund created by House Bill
No. 258, Chapter 125, page 229 of the General
Laws of the Regular Session of the Forty-fifth
Legislature.

"I will thank you to advise whether this is
a valid appropriation. If so, how may funds from
the General Revenue, when the General Revenue is
now on a deficit, be placed into the cash fund as
indicated by the Firemen's Relief and Retirement
Fund?

"Is the Firemen's Relief and Retirement
Fund created by the Acts of the Regular Session
of the Forty-fifth Legislature valid in the ab-
sence of a constitutional amendment?"

Your last question was answered in the affirmative
in our opinion No. 0-3468, copy of which is sent you herewith.

Sections 1 and 2 of House Bill No. 1011, Forty-
seventh Legislature, reads as follows:

"Section 1. That there is hereby appropriated annually for the fiscal years beginning September 1, 1941, and ending August 31, 1943, out of any funds in the State Treasury, not otherwise appropriated, the sum of Three Hundred Thousand Dollars (\$300,000) for the purpose of providing permanent funds and revenue for the "Firemen's Relief and Retirement Fund" created by House Bill No. 258, Chapter 125, page 229 of the General Laws of the Regular Session of the Forty-fifth Legislature, approved April 9, 1937.

"Section 2. Disbursements under this appropriation to be made by the State Treasurer as is provided by said House Bill No. 258, Chapter 125, page 229 of the General Laws of the Regular Session of the Forty-fifth Legislature, approved April 9, 1937, in the same manner as if the revenue and moneys herein provided by appropriation had been derived by the tax section, Section 2 of said House Bill No. 258, Chapter 125, Laws of the Forty-fifth Legislature, 1937."

Our answer to your first question is that House Bill No. 1011 constitutes a valid appropriation. In said opinion No. 0-3468 we held that a certain bill, House Bill 46, then pending before the 47th Legislature and which would have levied a designated tax upon gross fire insurance premium receipts, less reinsurance and return premiums paid policyholders, and appropriating the proceeds of such tax to this same Firemen's Relief and Retirement Fund, would be valid, if enacted. We therein pointed out that there need be no relation between the class of taxpayers and the purpose to which the proceeds are applied. *Carmichael vs. Southern Coal and Coke Company*, 301 U. S. 495, 81 L. Ed. 1245. See also, *New York Rapid Transit Corp., vs. New York*, 303 U. S. 573, 82 L. Ed. 1024. In that opinion we also held, in effect, that the purpose of House Bill 258, 45th Legislature, the Fireman's Pension and Relief Law, was a public one. The amount appropriated by House Bill 1011 is definite and certain. The validity of the appropriation follows.

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You also ask us how funds from the General Revenue may be placed into the cash fund as indicated by the Firemen's Relief and Retirement Fund, the General Revenue now being on a deficit. We hardly believe it necessary to answer this question exactly as asked. The appropriation under examination was made from a fund which does not have the cash but which has a deficit of nearly \$30,000,000, a fact known to the Legislature making the appropriation. It appears to us that the Firemen's Fund will be compelled to share this deficit and operate as other appropriations out of the General Revenue. While it is true that the Firemen's Fund appropriation bill on its face seems to contemplate a cash fund, it is equally as true that originally it was contemplated that the General Revenue Fund should be a cash fund, rather than a deficit.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

GRL:ej
Encl.

RECEIVED AUG 21, 1941
Gerald B. Mann

ATTORNEY GENERAL OF TEXAS

