



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. O-4366

Re: Whether or not the Comptroller may pay for the purchase of cigarette tax stamps where the appropriation to the Board of Control for such purpose is exhausted.

We beg to acknowledge receipt of your letter of date January 26, 1942, asking for an opinion upon the above subject-matter, as follows, to-wit:

*The Act levying a tax upon the sale or use of cigarettes in Texas provides that the payment of the tax may be evidenced by the use of a cigarette stamp attached or affixed to each package of cigarettes sold.

*The Act further provides that the stamp shall be sold by the Treasurer, but creates a 'Cigarette Tax Stamp Board' composed of the Board of Control, whose duty it is to design and have printed or manufactured the cigarette tax stamps of such size and denominations and in such quantity as may be determined by the said Board. The printing or manufacturing of the stamps shall be awarded by competitive bids and the contract shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the State in the enforcement of the provisions of the Act.

*The Act places enforcement and administration of the Act upon the Comptroller and provides that the Comptroller shall have the power and

authority in the enforcement to recall any stamps which have been sold by the Treasurer and which have not been used, and that the purchasers of any stamps shall be required to surrender any unused stamps upon the demand of the said Comptroller. Section 24 of the Act as amended by House Bill No. 154 of the 47th Legislature reads in part as follows:

*Sec. 24.(a) It is hereby made the duty of the Comptroller to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Act and to that end the Comptroller is hereby vested with all the power and authority conferred by this Act, said Comptroller shall have the power and authority to make and publish rules and regulations not inconsistent with this Act or with other laws or the constitution of this State or the United States for the enforcement of the provisions of this Act and the collection of the revenues hereunder.

*Section 30 of the Act provides in part as follows:

*That two and one-half percent of the gross amount of taxes, permit and license fees and other funds derived under the provisions of this Act, shall be set aside in a special fund subject to the use of the Comptroller and so much of said fund as may be necessary shall be expended in the administration and enforcement of the provisions of this Act and so much of the proceeds of two and one-half percent of said tax fund shall be, and the same is hereby appropriated for said purposes, same to be paid monthly as needed; provided that payment for the manufacture or printing of

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the cigarette tax stamps and for other expenses incurred by the Board incident thereto shall be made from the revenue derived from the cigarette tax before such fund is allocated under the provisions of this Act.'

'The 47th Legislature under the General Departmental Appropriation Bill appropriated the full two and one-half percent above mentioned to the Comptroller for the administration and enforcement of the cigarette and occupation tax laws for each of the years of this biennium but only appropriated \$28,000.00 for each of the fiscal years in the present biennium to the Board of Control for designing and procuring cigarette stamps.

'You will note that the two and one-half percent set aside for the use and benefit of the Comptroller in the administration and enforcement of the Act is separate and apart from the funds provided in the general statute for the payment of the manufacture or printing of the tax stamps.

'The General Appropriation Bill by rider provides that

'The appropriations herein provided are to be construed as the maximum sum to be appropriated to and for the several purposes named herein and the amounts are intended to cover, and shall cover the entire cost of the respective items and the same shall not be supplemented from any other sources; and, except as otherwise provided, no other expenditures shall be made, nor shall any other obligations be incurred by any Department of this State,....'

'The \$28,000.00 appropriated to the Board of Control for the designing and procuring of stamps for the present fiscal year is exhausted. The present supply of cigarette stamps is insufficient

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for the remainder of this fiscal year. It is estimated that the supply of cigarette stamps will be exhausted by June 1st., and that for June, July and August, 1942, it will be necessary for the proper enforcement of the cigarette tax law that the Board procure approximately one hundred million three cent stamps to supply the demand for that period.

"Since the appropriation to the Board of Control for the designing and procuring of stamps is exhausted, may the Comptroller purchase the needed supply of stamps and pay for them out of the two and one-half percent appropriated to him for the enforcement of the Act?"

We beg to advise that it is the opinion of this Department your question should be answered in the negative.

Under the facts as stated by you, and the statutes quoted in your letter, this conclusion is compelled by the rider appended to the General Appropriation Bill for the present biennium, which, for completeness sake, we here reproduce:

"The appropriations herein provided are to be construed as the maximum sum to be appropriated to and for the several purposes named herein and the amounts are intended to cover, and shall cover the entire cost of the respective items and the same shall not be supplemented from any other sources; and, except as otherwise provided, no other expenditures shall be made, nor shall any other obligations be incurred by any Department of this State,..."

Very truly yours

APPROVED FEB 11, 1942

W. W. ...
BY
FIRST ASSISTANT
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

Ocie Speer
Ocie Speer
Assistant

OS-MR

