



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

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

Dear Mr. Sheppard:

Opinion No. 0-5664

Re: Construction of appropriation
made to the Comptroller's Depart-
ment in the current appropriation
bill.

Your letter of recent date is quoted below:

'Under the appropriation made to the Comptroller, subdivision Gross Production, Natural Gas, Gross Receipts, Tax Division, there follows a number of specific itemizations and then the Rider:

'One-half of one percent of all the oil production tax collection, as provided by law, together with balances on hand at August 31, 1943, and August 31, 1944, is hereby appropriated to the Comptroller, for which the items listed above, and only the items listed above, shall be paid.'

'Then follows the paragraph:

'Audit and examination fees as provided by law together with balances on hand at August 31, 1943, and August 31, 1944, are hereby appropriated to the Comptroller to be used only as itemized herein in making audits.'

Honorable Geo. H. Sheppard - page 2

"It is to this last quoted paragraph that this inquiry is made:

"Since there are no itemized appropriations listed against the appropriation made by this paragraph, will it be considered a lump sum appropriation as defined in your Opinion No. 0-5577?

"(The audit and examination fees above described are provided for in Section 5, Article II, House Bill 8, Regular Session of the Forty-seventh Legislature.)"

Section 5, Article 2, House Bill 8, Regular Session, 47th Legislature, provides as follows:

"If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than One Hundred Dollars (\$100) for each violation and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties, and interest on all property and equipment used by the producer of gas in his business of producing gas, and if any producer of gas 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 producer of gas 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 gas audit 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 gas audit fund are hereby appropriated for such purpose.

Honorable Geo. H. Sheppard - page 3

The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County."

In our opinion, the audit and examination fees are appropriated in lump sum to be expended as provided by law. The reasoning of Opinion No. 0-5877 is applicable here. In that opinion we said:

"No itemization is found. Does this mean that no appropriation of the fund is made? If so, what purpose can the Legislature have had in enacting the rider?

"In our opinion, the language of the rider is subject to two constructions. It may mean that only the amounts itemized are appropriated, in which event, of course, there is no appropriation made. Or it may mean that the fees are appropriated in lump sum for administering the act, such expenditures from the appropriation to be limited to the purposes and amounts indicated in such items as the Legislature might provide. In the first case, the words 'as itemized herein' are regarded as components of the appropriation itself; in the second, as words of limitation, controlling the expenditure of the lump sum appropriation. Given the second construction, the failure to provide items indicates a legislative purpose not to limit the expenditure of the lump sum appropriation, but to allow its expenditure in the discretion of the Commission for expenses involved in administering the law.

"We are persuaded that the second is the correct construction. Thus interpreted, the rider has meaning; given the first construction, it is nugatory and no reason can be as-

Honorable Geo. A. Sheppard - page 4

signed why the Legislature should have incorporated it in the bill."

APPROVED SEP 23, 1911

Very truly yours

Geo. A. Sheppard
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By

R. V. Fairchild

R. V. Fairchild
Assistant

RWF-MH

APPROVED
OPINION
COMMITTEE
BY *BWT*
CHAIRMAN