



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Jesse James
State Treasurer
Austin, Texas

Dear Mr. James:

Opinion No. 0-5844

Re: Allocation by the Treasurer
of funds held in Suspense Account,
the source of which is unknown.

You request our opinion as follows:

"Some time ago it was discovered that there was a total of \$2,667.32 deposited in several Texas Banks, in various accounts, belonging to the State of Texas, none of which had ever been entered on the State Treasurer's records.

"On the assumption that the above amounts belonged to the State and should rest in the custody of the State, we drew drafts on the following banks covering the accounts and the amounts indicated:

*American National Bank, Austin, Texas		
R. L. Daniel, Commissioner of Insurance	\$10.78	
Deaf & Dumb Institute	.80	
Deaf, Dumb & blind Institute	.58	
James E. Ferguson, Crockett Road District	16.25	
O. M. Edwards, State Treasurer	13.40	
R. C. Roberdeau, Treasurer		
State Labor Commission	15.00	
Texas Rehabilitation Commission (Adm. Fd.)	3.22	
Charley Lockhart, State Treasurer		
Trust Fund	127.68	\$187.71
*Austin National Bank, Austin, Texas		
S. H. Terrell, Comptroller	\$.30	.30

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*Capitol National Bank, Austin, Texas		
- Sam Sparks C. D. Special 1923	\$892.37	
State Land Account 1928	<u>1,363.03</u>	\$2,255.40
*Farmers & Merchants State Bank & Trust Co., Rusk, Texas		
Texas State Hospital, Rusk, Texas (25 Years Old)	\$ <u>6.00</u>	6.00
*First National Bank, Huntsville, Texas		
I. L. Dickey, Prison Account	\$ <u>15.17</u>	15.17
*First National Bank, Waco, Texas		
State Banking Board (1925)	\$ <u>177.54</u>	177.54
*Guaranty Bank & Trust Co., Gatesville, Texas		
Juvenile Training Free Textbook Fd. ((1938)	\$ <u>25.20</u>	\$ 25.20
TOTAL		<u>\$2,667.32</u>

"The above banks have paid drafts drawn on themselves, signed Jesse James, State Treasurer, for the amounts indicated and charged same against the accounts as listed.

"We are without information relative to the original source of the funds in question other than that they have been held by the banks as inactive accounts for a period ranging from seven to twenty-five years.

"The sum of \$2,667.32 having been withdrawn from the banks by State Treasurer's draft is now held in The State Treasurer's Suspense account.

"We respectfully request your advice as to whether these funds can be transferred from the Treasurer's Suspense account, and if so to what State funds they should be credited."

In our Opinion No. 0-945, addressed to Honorable Tom C. King, State Auditor, of date January 15, 1940, construing the pertinent statutes, we said:

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"The reading of the above quoted Article clearly indicates that the procedure for final payment into the State Treasury is by the issuance of a deposit warrant. Such deposit warrant is issued to the particular fund to which the money goes. It is true, then, that until the fund to which the money should go is determined the deposit warrant to that fund cannot be issued for such money. For this reason, it is our opinion that in a case where money is paid to one of the departments of the State, and there is a question as to which particular fund said money should go, the same may properly be paid into the Suspense Fund because said money cannot be placed into the proper fund until a deposit warrant for such money is drawn. Only then is the money paid into the Treasury. While the particular destination of the fund is in question, even though there is no question as to the State's right to the money, we feel that the money comes within the category of 'money which is awaiting the time when it can finally be taken into the Treasury' as set out in Article 4388. You are, therefore advised that in cases where there is an actual doubt as to the particular fund to which a money should go said money may properly be placed in the Suspense Fund by the head of a department."

In view of the rule there announced, it is the opinion of this Department the items mentioned by you whose source and status as State property are unknown, must remain in the Suspense Account until in some way the proper status and disposition thereof are ordered by a court of competent jurisdiction, or by legislative act.

The court method could be by an escheat proceeding, under Title 53 of the Revised Civil Statutes.

Under the facts stated by you, we deem it to be within the realm of your duty to call the matter to the attention of the District or County Attorney of this county, under Article 3273 of the Revised Civil Statutes of the above title, to the end that he may institute the proper

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proceeding to have the funds escheated to the State of Texas, in which proceeding the proper disposition of the moneys may be made.

Very truly yours

ATTORNEY GENERAL OF TEXAS

FEB 8, 1944

Andrew Sellen

ATTORNEY GENERAL OF TEXAS By

Ocie Spear
Ocie Spear
Assistant

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