

"Sec. 2. Allocation. It is hereby specifically provided that out of the money appropriated for each school year of the biennium the sum of Five Million Three Hundred Seventy-eight Thousand, Four Hundred and Twenty Dollars (\$5,378,420) is hereby set aside for Salary Aid; Nine Hundred and Twenty Thousand Dollars (\$920,000) for High School Tuition; Three Million Four Hundred and Forty Thousand Dollars (\$3,440,000) for Transportation Aid; Seventy One Thousand Three Hundred and Seventy Dollars (\$71,370) for the administration of this Act as provided herein; Twenty-one Thousand and Two Hundred Dollars (\$21,200) for the expenses of the Legislative Committee, the salary of the Legislative Accountant, and for such other and necessary expenses incident to the duties of the Legislative Accountant. Such Legislative Accountant shall be paid a salary of not more than Four Thousand and Two Hundred Dollars (\$4,200.00) per year out of the sum hereby allocated. Any unexpended balance under either of the above allocations at the end of the first year of the biennium shall be transferred by order of the State Superintendent of Public Instruction and the approval of the Legislative Accountant to any allocation herein created and set up."

House Bill No. 3, Chapter 3 of the 49th Legislature, Regular Session amends Section 2 of this Article and reads as follows:

"Section 2. Allocation. It is hereby specifically provided that out of the money appropriated for the school year of 1944-1945 the sum of Nine Million One Hundred Ninety-one Thousand Dollars (\$9,191,000.00) is hereby set aside for Salary Aid; Three Million Seven Hundred Sixty-three Thousand Dollars (\$3,763,000.00) for Transportation Aid; Six Hundred Eighty Thousand Dollars (\$680,000.00) for High School Tuition; Seventy-one Thousand Three Hundred and Seventy Dollars (\$71,370.00) for the administration of this Act as provided herein; Twenty-one Thousand and Two Hundred Dollars (\$21,200.00) for the expenses of the Legislative Committee, the salary of the Legislative Accountant, and for such other and necessary expenses incident to the duties of the Legislative Accountant. Such Legislative Accountant shall be paid a salary of not more than Four Thousand Two Hundred Dollars (\$4,200.00) per year out of the sum hereby allocated. Any unexpended balance under either of the above allocations at the end of either year of the biennium may be transferred by order of the State Superintendent of Public Instruction and the approval of the Legislative Accountant to any allocation herein created and set up."

The answer to your inquiry involves a construction of Section 2, as it originally existed under House Bill 176, and the amended Section 2, as it now exists under House Bill No. 3.

The final paragraph of Section 2 of House Bill 176, as will be seen from the first above quotation, deals with "Any unexpended balance" of allocations at the end of the first year of the biennium. It made no similar provision for any unexpended balance of allocations for the second year of the biennium.

Section 2, as amended by House Bill 3 of the 49th Legislature, in the last paragraph provides:

"Any unexpended balance under either of the above allocations at the end of either year of the biennium may be transferred by order of the State Superintendent of Public Instruction and the approval of the Legislative Accountant to any allocation herein created and set up." (Emphasis ours)

Now, it is needless to say Section 2 of House Bill 176 was the sole controlling provision upon your question posed while it continued in existence. After the effective date of House Bill No. 3, Sec. 2, as there amended, became and continues to be the sole statutory provision for our guidance. Moreover, Section 2 as amended is yet a part and parcel of House Bill 176, as thus amended.

It is the opinion of this department that the final provision of Section 2 of Article 13 is clear and unambiguous and requires that your question be answered in the affirmative.

The language "any unexpended balance under either of the above allocations," means such balances of allocations specifically made "above" in that amendment. The language "at the end of either year of the biennium" could not mean other than such balances at the end of the first fiscal year and likewise those at the end of the second fiscal year of the biennium.

Of course, any unexpended balance of allocations contained in Section 2 of House Bill No. 176 at the end of the first year of the biennium, which had been transferred by the order of the State Superintendent of Public Instruction and the approval of the Legislative Accountant prior to the effective date of the amendment of House Bill No. 3, would be effective, and such transferred funds would no longer be the "unexpended balances" contemplated by the Act. House Bill No. 3 became effective February 5, 1945.

The construction we have given the statute comports with the elementary rules of statutory construction. In 39 Tex. Jur., p. 219, it is said:

"In accordance with what has already been said, when the language of a statute is unambiguous, and its meaning is clear, the statute will be construed and given effect according to its terms. In such a case, the court is not concerned with the policy or wisdom of the Act, nor with the probability that its operation will entail disastrous or mischievous results."

In the present case there is nothing to suggest that the result of such interpretation of a statute in this instance will entail disaster or bring about mischievous results whatsoever, but on the contrary its tendency is to support a clearly stated policy contained in original Section 2 -- that is, to authorize the supplementing of specific allocations from unexpended balances of other specific allocations in the Appropriation Act.

Hon. Geo. H. Sheppard, page 4 (O-6449)

Opinion No. O-5006 addressed to the State Board of Education is overruled insofar as it conflicts with this opinion.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Ocie Speer

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APPROVED MAY 16 1945
/s/ GROVER SELLERS
ATTORNEY GENERAL OF TEXAS

OS-MR:egw

This Opinion considered and
approved in limited conference.