



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-6760

Re: Validity of special appropriation for the General Land Office making certain refunds from various funds.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"The Forty-ninth Legislature in the General Appropriation Act for the department made an appropriation to the General Land Office for the fiscal year 1946, of \$50,000 and for the fiscal year ending August 31, 1947, of \$10,000 for refunds to purchasers and lessees or prospective purchasers and lessees of public lands, minerals, or timber, and to remitters in other instances as hereinafter provided.

"The preceding appropriation entitled 'General Land Office Special' shall be for the purpose of making refunds in accordance with the laws of this State from the funds affected to purchasers and lessees of public lands, minerals, and timber, or their vendees or assigns, or to prospective purchasers or lessees of public lands, minerals and timber, money which has been or which may be paid by them into the State Treasury or to the Attorney General in any of the following instances:

"(a) Through error made in good faith, to be supported by the official signature of the Commissioner of the General Land Office, or by the Attorney General, to whom such payment is made.

"(b) Where the payment is made in accordance with law, but title cannot issue or possession cannot pass, because of conflict in boundaries, erroneous sales, erroneous lease or other cause.

"(c) In case of sale of leased lands.

"(d) Where lease money has been paid on previous forfeited sales, the same having been reinstated and all interest paid.

"(e) Where erroneous timber sales or leases have been made.

"(f) Where overpayments have been made in final payments to the State Treasurer due to decreased acreage or other causes.

"(g) Where reduction has been made in acreage of timber sold or leased.

"(h) Where payments are made or have been made in good faith by claimants of lands in instances where the applicants have no right to purchase said lands as revealed by investigations of titles as provided by law.

"The amounts herein appropriated shall be paid out of the respective Funds to which said payments may have been made or may be accredited, and all claims for refunds except those embraced in subdivision (a) of Section 1 shall be certified by the certificate of the Commissioner of the General Land Office, and all such claims shall be verified by the affidavit of the claimant and approved by the Attorney General as to the correctness of the claim and

as to whom due, provided that the money so paid by any purchasers or lessees in case of sale of land by the purchaser, or assignment of the lease by the lessee after payment of such money, shall be refunded so that such refund shall be paid to the person upon whom the loss falls in case of failure of title, or right of possession.'

"This provision is in keeping with Senate Bill No. 281 of the Regular Session of the Forty-ninth Legislature.

"The question has arisen in this department as to whether the above mentioned appropriation is valid for the following reasons:

"1. Is it specific as to funds; that is, is the \$50,000 above mentioned for the year 1945 appropriated out of the General Revenue Fund, the Available School Fund, Permanent School Fund, or is it to be broken down among all funds wherein a refund might be required? If so, what portion is to be made to the separate funds?

"2. Is the appropriation legal against the Permanent School Fund for any money erroneously placed in such fund? In other words, can a refund be made from the Permanent School Fund or any other constitutional fund where expenditure of such fund is limited by the Constitution for certain purposes?"

Senate Bill 281 of the 49th Legislature of Texas, 1945, reads as follows:

"PUBLIC LANDS - REFUNDS - CHAPTER 145  
S. B. No. 281

"An Act providing for the refunding of certain monies paid in good faith by purchasers and lessees or prospective purchasers and prospective lessees of public lands, minerals or timber, or paid in good faith on transactions in connection with such public lands, minerals and timber in instances where the funds to which such payments are accredited are not entitled to such monies; and declaring an emergency.

**"BE IT ENACTED BY THE LEGISLATURE OF THE STATE  
OF TEXAS:**

**"Section 1. That upon proper proof as hereinafter provided, the Comptroller of the State of Texas is hereby authorized and directed to draw his warrant in refund of monies paid into the State Treasury on public lands in good faith but where the funds to which such monies may be accredited or may have been accredited, are not entitled thereto in any of the following instances:**

**"(a) Through error made in good faith, to be supported by the official signature of the Commissioner of the General Land Office, or of the Attorney General, to whom such payment is made;**

**"(b) Where the payment is made in accordance with law, but title cannot issue or possession cannot pass, because of conflict in boundaries, erroneous sales, erroneous lease or other cause;**

**"(c) In case of sale of leased lands;**

**"(d) Where lease money has been paid on previous forfeited sales, the same having been reinstated and all interest paid;**

**"(e) Where erroneous timber sales or leases have been made;**

**"(f) Where overpayments have been made in final payments to the State Treasurer due to decreased acreage or other causes;**

**"(g) Where reduction has been made in acreage of timber sold or leased;**

**"(h) Where payments are made or have been made in good faith by claimants of lands in instances where the applicants have no right to purchase said lands as revealed by investigations of titles as provided by law.**

**"Sec. 2. All refunds herein provided for are to be paid out of the respective funds to which**

said payments have been made or may be accredited after specific appropriations have been made according to law, and all claims for refunds except those embraced in subdivision (a) of Section 1 shall be certified by the certificate of the Commissioner of the General Land Office, and all such claims shall be verified by the affidavit of the claimant and approved by the Attorney General as to the correctness of the claim and as to whom due, provided that the money so paid by any purchasers or lessees in case of sale of land by the purchaser, or assignment of the lease by the lessee after payment of such money, shall be refunded so that such refund shall be paid to the person upon whom the loss falls in case of failure of title, or right of possession.

"Sec. 3. The fact that the present law providing for refunds on public lands is not broad enough to enable the deposit of monies, in certain instances, to the funds to which they belong for fear that the remitters may be entitled to refunds of small portions, thereby causing an enormous General Land Office suspense account, depriving the respective funds of revenues therefrom, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be suspended, and it is so suspended, and this Act shall be in effect from and after its passage, and it is so enacted.

"Passed the Senate, April 4, 1945; Yeas 29, Nays 0; passed the House, April 17, 1945; Yeas 123, Nays 0. Filed without the Governor's signature, May 2, 1945. Effective May 2, 1945."

Opinion No. 0-5367 of this Department, addressed to you, holds a certain appropriation from the Permanent School Fund for the purpose of reimbursing a person for funds erroneously paid by him as bonus and rental upon alleged vacancies in public school lands (the State's title thereto having failed by judgment of a court of competent jurisdiction) to be a valid and lawful appropriation from the Permanent School Fund. We quote from said opinion as follows:

"As is apparent from the portions of the bill quoted above, the Act does not purport to appropriate moneys rightfully belonging in the Permanent School Fund, to uses and purposes other than those to which the fund is dedicated by constitutional provision; but the purpose of the appropriation is to require the Permanent School Fund to account for moneys not rightfully belonging to it which in equity and good conscience it cannot retain. Such an appropriation, in our opinion, does not violate the terms of Article 8, Section 7 of the Constitution, prohibiting the diversion of special funds. You are therefore advised that such an appropriation from the Permanent School Fund is valid.

"Similar appropriations have heretofore been approved by this department:

"See the Opinions listed in the following volume of the letter opinions of this department -- Volume 377, page 980, page 999; Volume 371, page 594, page 711; Volume 367, page 38."

We answer your first question as follows:

We think the appropriations inquired about are specific and valid. The \$50,000 appropriation for 1946 and the \$10,000 appropriation for 1947 are payable out of the various funds affected. In other words, in 1946 proper claims properly allowed will be paid out of the respective funds to which the payments sought to be refunded were paid, or accredited, until the total amount of payments on such approved claims reaches the sum of \$50,000. Likewise in 1947, proper claims properly allowed will be paid out of the respective funds to which the payments sought to be refunded were paid, or accredited, until the total amount of payments on such claims reaches the sum of \$10,000.00.

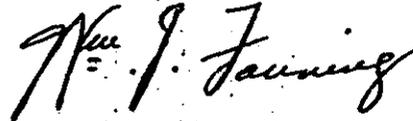
We answer your second question in the affirma-

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tive. See Opinion No. O-5367, referred to above, a copy of which you have in your files.

Very truly yours

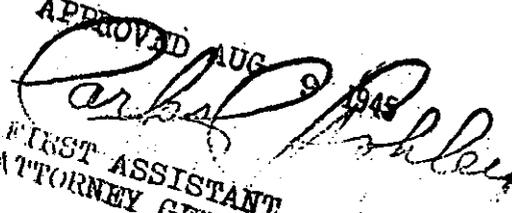
ATTORNEY GENERAL OF TEXAS



By

Wm. J. Fanning  
Assistant

WJF:BT

APPROVED AUG 9 1945  
  
FIRST ASSISTANT  
ATTORNEY GENERAL

APPROVED  
OPINION  
COMMITTEE  
BY BTB  
CHAIRMAN