



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

September 8, 1955

Honorable J. Earl Rudder
Commissioner
General Land Office
Austin, Texas

Letter Opinion No. MS-239

Re: Validity of rider in House
Bill 140, 54th Leg. (Gen-
eral Appropriation Act)
providing for deposit and
appropriation of certain
moneys collected by the
General Land Office in con-
nection with mineral ex-
ploration of State lands.

Dear Mr. Rudder:

Your request for an opinion reads as follows:

"The General Appropriation Act for the bi-
ennium beginning September 1, 1955 (House Bill
140, Chapter 519, Acts of the 54th Legislature,
at page 1476) contains the following provision
under the appropriations to the General Land
Office:

"The Commissioner of the General
Land Office shall deposit in the State
Treasury as a special fund any moneys
received by the Commissioner by con-
tract or otherwise, as fees for the
issuance of permits for geological,
geophysical and other surveys and in-
vestigations, for minerals other than
sand, shell, gravel, uranium, gold,
silver, platinum, cinnabar or other
metal, and which are in addition to the
moneys received under the provisions of
Chapter 321, Acts of the 51st Legisla-
ture, 1949; such moneys are hereby appro-
priated to the General Land Office for
the biennium beginning September 1, 1955,
for the payment of salaries (said sala-
ries to be commensurate with, but not to
exceed, salaries paid in other State De-
partments for similar duties), travel
expenses and other operating expenses,

including the purchase and maintenance of marine equipment, necessary to the supervision and regulation of exploration, leasing and development of State owned land. This amount is estimated to be \$200,000.00 for each fiscal year.'

"Chapter 321, Acts of the 51st Legislature (Article 5382b, Vernon's Civil Statutes) authorizes the Commissioner of the General Land Office to issue permits for geological, geophysical and other surveys and investigations of areas within tidewater limits, to be conducted under such rules and regulations as the Commissioner may promulgate to prevent the unnecessary pollution of waters, destruction of marine life, and obstruction of navigation. The permittee is required to pay and the Commissioner is required to deposit in the State Treasury for the Permanent School Fund a sum equal to \$50 per day for the number of days during which the actual work of the survey is conducted.

"By contractual arrangement with the General Land Office the permittee also pays an additional sum, which is charged on a uniform basis, to assist in defraying the expenses of the Land Office in supervising and regulating these operations. Article 5382b does not specifically provide for the collection of these additional charges and does not contain any provision relative to disposition of any money collected other than the \$50 per day which must be deposited to the credit of the Permanent School Fund. This office is of the view that it has the authority to collect the additional sum as an official charge under its statutory authority to supervise and regulate these investigations.

"The Comptroller has raised the question of whether the rider in House Bill 140 is valid authority for him to accept these moneys for deposit to a special fund and to disburse them as provided in the rider. We shall appreciate your opinion on the following questions:

"(1) Is this provision sufficient authority for the creation of a special fund in the Treasury for the biennium beginning September 1, 1955?

"(2) Is it a valid appropriation to the General Land Office of the moneys received from the source set out in the rider?"

The fixing of official fees and charges is a matter of general legislation which cannot be accomplished by a rider in an appropriation act. Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559 (1946). However, the rider under consideration is not invalid as an attempt to levy fees and charges for the first time. It presupposes the existence of the authority to make these charges under general law and merely makes provision for the disposition and use of the moneys during the biennium beginning on September 1, 1955.

Money which is collected by a State officer under color of the authority of his office becomes State funds and must be accounted for to the State. Att'y Gen. Op., Book 382, p. 526 (1938); Att'y Gen. Op. O-3711 (1942); Nueces County v. Currington, 139 Tex. 297, 162 S.W.2d 687 (1942); 34 Tex. Jur., Public Officers, Sec. 87. The Comptroller clearly has the authority and the duty to receive for deposit into the Treasury the moneys which are collected by the Land Commissioner from the source mentioned in the rider, regardless of whether there is specific statutory authorization for the collection. The Legislature has interpreted the general law as authorizing these collections, but a resolution of the question of the authority to make the charges is not pertinent to this opinion and we do not undertake herein to resolve that question. Since the money is collected under color of office, it properly belongs in the State Treasury; and, being State money, it is subject to appropriation by the Legislature to the same extent as money collected pursuant to express statutory authority.

Your first question raises an inquiry as to whether a special fund can be created by a rider in an appropriation act. In the absence of a constitutional or statutory direction as to proper fund for the deposit of State money received into the Treasury, the money should be placed to the credit of the General Revenue Fund. Att'y Gen. Op. O-3711, supra; Att'y Gen. Op. V-143 (1947). Unless the Legislature can by a rider in an appropriation act provide for their deposit into a special fund, the Comptroller would be required to deposit these moneys to the General Revenue Fund.

A rider attached to a general appropriation bill cannot repeal, modify or amend an existing general law; and riders providing for use or transfer of special funds contrary to general statutes which provide for a different deposit or use

are invalid. Att'y Gen. Op. V-1254 (1951). In the present instance, there is no general statute requiring that these moneys be placed in the General Revenue Fund or designating any other fund for their deposit. Therefore, the rider is not an attempt to alter or amend a general statute.

This rider attempts to create a special fund only for the appropriation period covered by the General Appropriation Act, and the creation of the fund is incidental to the matter of making an appropriation of the moneys received from a specified source. In Att'y Gen. Op. V-1254, it is stated:

"In addition to appropriating money and stipulating the amount, manner, and purpose of the various items of expenditure, a general appropriation bill may contain any provisions or riders which detail, limit or restrict the use of the funds or otherwise insure that the money is spent for the required activity for which it is therein appropriated, if the provisions or riders are necessarily connected with and incidental to the appropriation and use of the funds, and provided they do not conflict with general legislation.

". . . The Mississippi Supreme Court has said: 'The legislature can provide in bills making appropriations for the expenditure of the money, and the conditions on which it may be drawn from the treasury, and for the administration of the fund so long as the machinery created is limited to the appropriation so made. Trotter v. Gates & Co., 139 So. 843, 846 (Miss. Sup. 1932). The Supreme Court of Montana, in holding that a rider in an appropriation bill changing the method of payment out of a designated fund is valid, said, ' . . . so long as incidental provisions of an appropriation bill are germane to the purpose of the appropriation it does not conflict with any Constitutional provision. . . . What valid objection can be interposed to such a course, so long as the Legislature confines the incidental provisions to the main fact of the appropriation, and does not attempt to incorporate in such act general legislation, not necessarily or directly connected with the appropriation legally made,

under the restrictions of the section in question?' Davidson v. Ford, 141 P.2d 373, 377 (Mont. Sup. 1943)."

The provision for deposit of these moneys to a special fund merely supplies the administrative machinery for setting the money apart from the general revenue as an incident to its appropriation. Since it does not conflict with any other statutory provision, we are of the opinion that provision for the deposit of the money to a special fund during the biennium covered by the Appropriation Act is valid. The fact that the charges are not expressly fixed by statute is immaterial. Being State money, the Legislature has the power to regulate its deposit and expenditure consistent with the purpose for which it is collected. Your first question is therefore answered in the affirmative.

It is not questioned that the Legislature may appropriate for stated purposes all the money received from a specific source, and that this is a specific appropriation within the requirements of Section 6 of Article VIII of the Constitution. Atkins v. State Highway Department, 201 S.W. 226 (Tex.Civ.App. 1918); National Biscuit Co. v. State, 134 Tex. 293, 135 S.W.2d 687 (1940).

The purpose for which these moneys are appropriated is in harmony with the purpose for which they are received by the Commissioner, and is a lawful purpose for which the Legislature could have made a valid appropriation to the Land Office out of the General Revenue Fund. Instead of leaving these moneys to be deposited to the unrestricted General Revenue Fund account and appropriating a specified amount to the Land Office from the General Revenue Fund, the Legislature has chosen to set them aside for use by the Land Office. The power of the Legislature to make the appropriation in this manner is not dependent on the nature of the Land Commissioner's authority to make the collections. Since the money unquestionably belongs to the State, it can be used by the State under legislative direction. We do not find any basis for a rule which would prohibit the Legislature from appropriating the money to the department which collected it, to be spent for the purpose for which it was collected, especially where the Legislature has acted in the belief that the department has the authority to make the collection. We do not have to decide whether the Legislature could appropriate the money

Hon. J. Earl Rudder, page 6 (MS-239)

for other purposes, as it has not attempted to do so. Your second question is also answered in the affirmative.

APPROVED:

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Reviewer

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MKW:wb

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By *Mary K. Wall*
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