



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

January 15, 1959

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Station  
Austin 11, Texas

Opinion No. WW-544

Re: The effect to be given  
to Article 5221b-22a,  
Vernon's Civil Statutes,  
relating to administra-  
tion and disbursement of  
the moneys in the Unem-  
ployment Compensation  
Special Administration  
Fund.

Dear Mr. Calvert:

You have requested our opinion on the following ques-  
tion:

"For my further guidance in payment of claims of like nature, I shall thank you to advise me what effect, if any, I am to give the following language in Article 5221b-22a, as amended by the Regular Session of the Fifty-first Legislature: 'All moneys in the Unemployment Compensation Special Adminis- tration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is pro- vided by law for other special funds.'"

Article 5221b-22a provides in part as follows:

"There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compen- sation Special Administration Fund which may be used by the Commission for the purposes of pay- ing costs of the administration of this Act including the costs of construction and purchase of buildings and land necessary in such adminis- tration. . . . Nothing in this Section, however, shall prevent said moneys from being used as a

revolving fund, to cover expenditures necessary and proper under the Texas Unemployment Compensation Act for which Federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. . . . All moneys which are deposited or paid into the Unemployment Compensation Special Administration Fund are hereby appropriated and made available to the Commission and shall be continuously available to the Commission for expenditure in accordance with the provisions of this Act, and shall not lapse at any time or be transferred to any other fund. All moneys in the Unemployment Compensation Special Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds. . . ."

Section 7 of Article VIII of the Constitution of Texas, provides:

"The Legislature shall not have power to borrow, or in any manner, divert from its purpose, any special fund that may, or ought to, come into the Treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose any special fund, or any part thereof."

This Section expressly prohibits the diversion by the Legislature of any special fund that may or ought to come into the State Treasury. Carrol v. Williams, 109 Tex. 255, 202 S.W. 2d 504. However, this Section applies only to constitutional special funds, and is not applicable to statutory special funds. Gulf Insurance Co. v. James, 143 Tex. 424, 185 S.W.2d 966, 1945, Attorney General's Opinion V-107 (1947).

In Gulf Insurance Co. v. James, supra, the Court stated:

"We agree with the holding of the Court of Civil Appeals that the Legislature has the right to transfer the balance on hand in these special funds to the General Revenue Fund. In so doing the Legislature does not violate the provisions of Article VIII, Section 7, of the Constitution.  
. . . ."

". . . The State could have required the funds collected for the purposes indicated to be paid directly to the General Revenue Fund in the first instance. Ex Parte Gregory, 20 Tex. App. 210, 219, 54 Am.Rep. 516; Brown v. City of Galveston, 97 Tex. 1, 17, 75 S. W. 488. If it had done so, then certainly the excess, if any, would have been available for use for general purposes. The propriety and fairness of an enactment authorizing the use of the unexpended balances in these special funds for general purposes present legislative rather than judicial considerations. Consequently, the State now has the right, if the Legislature deems it wise to pass suitable laws authorizing it, to use the balances of these special funds for general purposes. Section 1 of the Act which authorized the transfer of Operator's and Chauffer's License Fund to the General Revenue Fund, is therefore valid."

The Unemployment Compensation Special Administration Fund is a statutory special fund as distinguished from a constitutional special fund, and therefore, the Legislature may provide the purposes for which this special fund may be expended. However, in the administration of the special fund, it must be administered and disbursed for the limited purposes for which the fund was created, as directed by the Legislature.

You are, therefore, advised that the above quoted provisions of Article 5221b-22a direct you and the Treasurer to keep the moneys in the Unemployment Compensation Special Administration Fund in a separate account from all other funds, and it is to be expended for only those purposes authorized by the Legislature.

#### S U M M A R Y

The Unemployment Compensation Special Administration Fund, created by the provisions of Article 5221b-22a, Vernon's Civil Statutes, is a statutory special fund and moneys deposited in such fund

Honorable Robert S. Calvert, page 4. (WW544)

must be kept separate and apart from  
all other moneys and can only be ex-  
pended for the purposes authorized  
by the Legislature.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
John Reeves  
Assistant

JR:mfh:zt

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

Mrs. Marietta Payne

Jack Goodman

Henry G. Braswell

REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert