



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 6, 1960

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

Opinion No. WW-834

Re: Pre-existing law for
payment of various claims
for reimbursements of fees
paid to the State of Texas.

Dear Mr. Calvert:

Your request for an opinion of this office reads as follows:

"Attached to this opinion request you will find claims for reimbursement of fees paid to the State of Texas.

"Section 44 of Article 3 of our State Constitution provides in part as follows:

"The Legislature---shall not grant--- by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law."

"Is there sufficient pre-existing law for me to pass the claims for payment?"

The referenced claims include the following:

- A. Claim by Mr. Bernard F. Adler for Private Employment Agency License fee.
- B. Claim by Miss Charlene N. Ickes for Private Employment Agency License fee.
- C. Claim by Mrs. Nancy Bennett for Private Employment Agency License fee.
- D. Claim by Mrs. W. H. Carver for Real Estate Dealer's License fee, issued to W. H. Carver, deceased.
- E. Claim by Mr. W. E. Hutton--Miller for Securities Dealer's Application filing fee.

F. Claim by Johnnie Curry for Barber's License fee.

We have concluded that there is pre-existing law sufficient to support the appropriation for and payment of these claims.

The term "pre-existing law" as used in Art. III, Sec. 44 of the Constitution has been interpreted to include not only statutory law but also common law, where not in conflict with our Constitution or statutes. Art. 1, R.C.S.; Austin National Bank v. Sheppard, 123 Tex. 272, 71 S.W.2d 242 (1934). From this rule it has been reasoned that a fee which has been paid under (1) fraud, (2) duress, or (3) mistake of fact may be recovered. See Attorney General's Opinion No. 0-6974 (1945); Attorney General's Opinion No. 0-6282 (1945) and authorities therein cited.

A review of the information you have supplied us relating to claims A, B, C, and D above enumerated seems to indicate that each payment was made under a mistake of fact; that is, that the license for which each respective payment was made would be used by the applicant. It appears that each such license was in fact not used but returned to the issuing agency.

Likewise, it appears that the payments in claims E and F were each made under mistake of fact. In claim E, the applicant believed that a certificate, or license, would issue to him, and thereupon remitted the fee required for filing the application. The certificate was never issued, and hence the amount paid as a filing fee should be refunded.

In claim F, claimant submitted his application for a Barber's License, accompanied by the statutory fee, after he had been convicted of a felony and while he was in fact serving his sentence in the penitentiary. Apparently, the felony conviction was of a type which provided grounds for the revocation of or refusal to issue a Barber's License (see Art. 7346, sec. 10, P.C.). The license was prepared for issuance, but before it was actually sent to claimant his felony conviction was discovered. Since payment was remitted upon the premise that the license would issue, this fee should be refunded also.

It is necessarily assumed, for the purpose of this opinion, that appropriations sufficient for the payment of the claims involved have been duly made by the Legislature, and that the only question is whether there was pre-existing law to support the appropriations and payment.

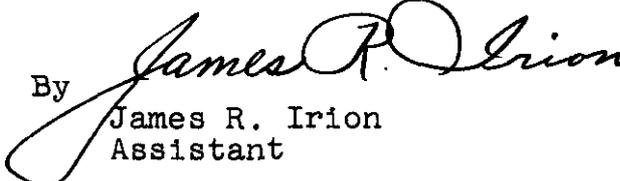
S U M M A R Y

There is sufficient pre-existing law to support the appropriations for and refund of six claims for various fees paid the State, each under mistake of fact.

Yours very truly,

WILL WILSON
Attorney General of Texas

By


James R. Irion
Assistant

JRI:cm

APPROVED:

OPINION COMMITTEE:
W. V. Geppert, Chairman

L. P. Lollar
Leon F. Pesek
J. Arthur Sandlin
Iola Wilcox

REVIEWED FOR THE ATTORNEY GENERAL
By: Leonard Passmore