



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

August 31, 1965

Dr. James E. Peavy  
Commissioner of Health  
Texas State Department of Health  
Austin, Texas

Opinion No. C-493

Re: Whether the Sanitarians  
Registration and License  
Fund is a special fund  
under the direction of  
the State Treasurer and  
related question.

Dear Dr. Peavy:

Your letter requesting an opinion of this office reads  
in part as follows:

"The Sanitarians Registration Act (Senate  
Bill 333) as passed by the 59th Legislature au-  
thorizes the State Board of Health to set up  
certain proceedings for the registration of  
sanitarians; the charging of a Ten Dollar  
(\$10.00) fee and providing authorization for  
the setting up of standards and qualifications  
for sanitarians to be registered under the Act.

"The Act further authorizes fees and ex-  
penses in Section 8 . . .

". . .

"In reviewing this Act with the Comptroller's  
Office in order to establish a special Sanitarians  
Registration and License Fund, the following ques-  
tions were raised:

"1. Is the Sanitarians Registration and  
License Fund a special fund under the direction  
of the State Treasurer? The first sentence of

8(b) creates a special fund; however, the last sentence infers that the fund may not be in the State Treasury (for example, it may be a trust fund).

"2. If this is a special fund under the direction of the State Treasurer, are the receipts appropriated to the Texas State Department of Health?

"3. If this is a special fund under the direction of the State Treasurer, then what is the meaning of the last sentence in Section 8 (b)? The surplus would already be in the State Treasury.

". . .

"We would appreciate your assistance in answering the questions herein raised and your interpretation and direction as to our procedure in setting up the special fund in the State Treasury."

Sec. 8(b) of S. B. No. 333, Acts 59th Leg., 1965, ch. 300, p. 606, provides:

"There is created a special Sanitaricians Registration and License Fund which will consist of any and all fees charged or collected under any of the provisions of this Act. The Fund shall be under the supervision of the Board which shall file annually a statement of income and expenses with the Secretary of State. All expenses necessary to the administration and enforcement of this Act, as well as any other expenses of whatsoever character that may arise because of the terms and provisions hereof, shall be made from the Fund, including the reimbursements made to Board members, as provided for by the provisions of this Act. Any surplus remaining in the Sanitaricians Registration and License Fund, at the end of each fiscal year,

not necessary to defray the expenses mentioned and provided under the terms of this Act, shall be paid into the State Treasury." (Emphasis added).

The Legislature has clearly set apart those fees collected by authority of Senate Bill 333 into a special fund entitled "Sanitariums Registration and License Fund." A special purpose has been designated for funds collected under Senate Bill 333. The caption of Senate Bill 333 reads in part as follows:

". . .providing for expenditure and other disposition of funds collected under provisions of the Act and fixing purposes for which such funds may be used; . . ."

Section 8(b) as quoted above, clearly authorizes expenditures of funds collected under the Act for all expenses necessary to the administration and enforcement of the Act, as well as other expenses which may arise because of the terms and provisions of the Act. Fees collected under the Act are used exclusively for the occupation required to pay them and therefore are collected in a valid special fund. James v. Joseph, 179 S.W.2d 411 (Tex.Civ.App. 1944) reversed on other grounds, 143 Tex. 440, 185 S.W.2d 974. 52 Tex.Jur.2d. 747, State of Texas, § 36. In Section 8(b) the words "into the State Treasury" mean that funds are to be transferred into the General Fund. Manion v. Lockhart, 131 Tex. 175, 114 S.W.2d 216 (1938). The State has the right, if the Legislature deems it necessary, to pass suitable laws authorizing the balance of Special Funds created by statute to be used for general purposes. Gulf Ins. Co. v. James, 143 Tex. 424, 185 S.W.2d 966 (1945).

In absence of any constitutional or statutory requirement that Special Funds or state funds must be deposited in the hands of the State Treasurer, a statute authorizing collection of license fees in a Special Fund will not be construed so as to require deposit of such fees into the custody of the State Treasurer. Gipson v. Ingram, 215 Ark. 812, 223 S.W.2d 595 (1949); State Licensing Board of Contractors v. State Civil Service Commission, 110 So.2d 847 (La. Ct. of App. 1959, aff. on app.). Fees collected under the Act may be paid to the State

Treasurer as custodian of the Sanitariums Registration and License Fund administered as a special fund. The State Board of Health is authorized by the Act to expend funds collected under the Act for purposes described by the Act. A full report of expenditures is to be filed with the Secretary of State at the end of each fiscal year. All monies are to be deposited in the General Revenue Fund at the end of each fiscal year.

It is our opinion that:

(1) The Sanitariums Registration and License Fund is a special fund which may be deposited in the custody of the State Treasurer.

(2) Monies deposited in the Sanitariums Registration and License Fund are to be expended under supervision of the State Board of Health for the purposes enumerated by Senate Bill 333, 59th Legislature, 1965.

(3) Any monies remaining in the Sanitariums Registration and License Fund at the end of each fiscal year are to be transferred to the General Fund of the State Treasury.

#### S U M M A R Y

(1) The Sanitariums Registration and License Fund is a special fund which may be deposited in the custody of the State Treasurer.

(2) Monies deposited in the Sanitariums Registration and License Fund are to be expended under the supervision of the State Board of Health for the purposes enumerated by Senate Bill 333, 59th Leg.

(3) Any monies remaining in the Sanitariums Registration and License Fund at the end of each fiscal year are to be transferred to the General Fund of the State Treasury.

Dr. James E. Peavy, page 5 (C-493 )

Very truly yours,

WAGGONER CARR  
Attorney General

*Gordon Houser*

By:

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APPROVED:  
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL  
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