



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

September 11, 1969

Hon. Jesse James  
State Treasurer  
Treasury Department  
State of Texas  
Austin, Texas 78711

Opinion No. M-468

Re: Construction of House  
Bill 1217, Acts of the  
61st Legislature,  
Regular Session, 1969,  
Chapter 885, Page 2703  
relating to depositing  
interest on various  
funds

Dear Mr. James:

Your request for an opinion reads in part  
as follows:

"Please advise this office by official  
opinion whether depository interest earned by  
this office on the following listed special  
funds should be deposited to the General  
Revenue Fund as directed by the provisions of  
Article 2543d, Texas Revised Civil Statutes.

The funds in question are as follows:

<u>FUND NO.</u>	<u>FUND NAME OR TITLE</u>
21	Trust Account, Federal Aid Highway Act
26	Unemployment Compensation Adm.
28	Federal Old Age Assistance
30	Education Agency Driver Fund
37	Federal Child Welfare Service
92	Federal Disaster

<u>FUND NO.</u>	<u>FUND NAME OR TITLE</u>
111	Federal Disabled Assistance Fund
117	Federal Public Welfare Adm.
118	Federal Public Library Service
127	Federal Economic Oportunity Fund
131	Federal Blind Assistance
132	Federal Children Assistance
134	Federal Older Americans
135	Federal Mental Health & Mental Retardation
136	Denton State School Federal Fund
141	Federal Adult Blind
148	Federal Health, Education & Welfare
159	Federal Medical Assistance Fund
169	Federal Educational
171	Federal School Lunch
186	College Building 1948/1957
219	Federal Higher Education Fund
221	Federal Civil Defense & Disaster Relief
222	Federal Department Public Safety

<u>FUND NO.</u>	<u>FUND NAME OR TITLE</u>
223	Land & Water Conservation
224	Governor's Office Federal Projects
268	Federal Market News
273	Federal Health
290	Federal Drought Relief Fund
300	College Building 1958/1967
389	College Building 1966/1967
903	Flood Area School & Road Fund"

Section 1 of Article 2543d, Vernon's Civil Statutes (as enacted by House Bill 1217 Acts of the 61st Legislature, Regular Session, 1969, Chapter 885, Page 2703) provides:

"Interest received on account of time deposits of moneys in funds and accounts in the charge of the State Treasurer shall be allocated as follows: To each constitutional fund there shall be credited the pro rata portion of the interest received due to such fund. The remainder of the interest received, with the exception of that portion required by other statutes to be credited on a pro rata basis to protested tax payments, shall be credited to the General Revenue Fund. The interest received shall be allocated on a monthly basis."

Each of the funds named in your request is money granted the State by the Federal Government for certain designated purposes with the exception of Fund Nos. 186 - College Building 1948/1957, 300 - College Building 1958/1967, and 389 - College Building 1966/1967.

The three funds mentioned above which do not consist of Federal moneys (Fund Nos. 186, 300, and 389) are funds derived from the provisions of Section 17 of Article 7, Constitution of Texas, providing for a College Building fund.

Therefore, these funds are each constitutional funds within the meaning of Section 1 of Article 2543d, and the interest received on account of time deposits of such funds is to be credited to such funds.

Article 2543d as applied to the other funds states that the interest received on account of time deposits shall be credited to the General Revenue Fund. Therefore, the interest on the Federal funds mentioned in your request is to be credited to the General Revenue Fund unless such action constitutes diversion of the purpose for which the Federal grants were made. Each of the Federal funds mentioned in your request constitutes a special fund granted by the Federal government to be expended for specific purposes and are held by the State in trust for the benefit of the programs being administered. Friedman v. American Surety of New York 137 Tex. 149, 151 S.W.2d 570 (1941). Attorney General's Opinions Nos. V-427 (1947), WW-241 (1957), M-71 (1967), M-266 (1958), V-1250 (1951) and C-530 (1965).

Generally in the event that the corpus of the testamentary trust produces supplementary income for which no provision has been made directing its distribution or accumulation such income will be accumulated and will be distributable as part of the corpus. Stoffles v. Stoffles 18 N.J. Super. 300, 86 A.2d 806 (1952); Tobler v. Moncrief 72 N.J. Super. 48, 178 A.2d 105 (1962). Attorney General's Opinion No. C-610 (1966). Thus it was held in Moore v. Sanders 106 S.W.2d 337 (Tex.Civ.App., no writ, 1937):

"The general rule is well settled that, where trust money cannot be applied either immediately or within a short time to the purposes of the trust, it is the duty of the trustee to make the trust productive to the cestui que trust by investment of it in some proper security, and a duty to invest arises by necessary implication from direction to pay over the interest or income."

The same rule applies to interest earned by a deposit of special fund: It was held in Lawson v. Baker, 220 S.W. 260, 272 (Tex.Civ.App. 1920, error ref.):

"...Interest, according to all the authorities, is an accretion to the principal fund earning it, and, unless lawfully separated therefrom, becomes a part thereof. We think it is clear that the interest earned by deposit of special funds is an increment that accrues to such special fund, and any attempt of the Legislature to make such interest a part of the general revenue is futile, in the face of the constitutional provisions creating or dedicating these funds to special purposes." (Emphasis added.)

Therefore, in Attorney General's Opinion C-610, supra, it was stated that income derived from interest on time deposits or short term investments of restricted funds becomes a part of the restricted funds and can be expended only for the purposes for which the restricted funds may be expended, unless specific provision is made for distribution of income. In Attorney General's Opinion C-530 (1965), it was stated:

"The Legislature, recognizing the trust nature of the Federal funds, proceeded to enact House Bill No. 12, Acts of the 59th Legislature, Regular Session, 1965 (the General Appropriations Act for the biennium beginning September 1, 1965 and ending August 31, 1967), which appropriates the Federal funds and stipulates the conditions under which such funds may be expended. Reference is made to Article V, Section 27 of said General Appropriations Act which provides as follows:

"'Sec. 27. FEDERAL FUNDS APPROPRIATED FOR USE. Any funds received by the agencies of the State named in this Act from the United States Government are hereby appropriated to such agencies for the purposes for which the Federal grant, allocation, aid, or payment was made, subject to the provisions of this Act. Within thirty (30) days after the receipt of any such Federal grants, allocations, aid or payments, the amounts thereof and the purposes for which they were made shall be reported to the Governor and the Legislative Budget Board.' (Under-scoring added for emphasis.)

"It appears clearly that the United States Government has intended to impose upon the states who accept the Federal funds as transferee of the funds equitable duties (or conditions) to deal with same for the benefit of the trainees, and the fact that no formal or technical language was used, such as 'trust' or 'trustee', is not controlling. The test of whether a trust was created is whether the Federal government, as settlor, manifested an intention to create the kind of relationship which to lawyers is known as a trust. Scott on Trusts, Vol. 1, Section 24, page 147; Bogert, Trusts and Trustees, Vol. 1, Section 45, pages 293, 294; Restatement, Trusts, Vol. 1, Chapter 1, Section 2, page 6.

"A fundamental requisite of a trust is the separation of the legal estate from the equitable estate and the beneficial enjoyment. 54 Am.Jur., Trusts, Section 35, at pages 46 and 47; 10 Am.Jur., Charities, Section 4, at page 587.

"We are of the opinion that the Federal government, as settlor, intended to create a trust which would be for a public purpose.

"It is recognized generally that the state or sovereign, as well as public officers, may be a trustee with respect to matters falling within its functions. 90 C.J.S. 133, Trusts, Sec. 204; 81 C.J.S. 1189, 1191, States, Sec. 154.

"In 81 C.J.S. 1146, States, Sec. 132, the general rule is recognized that,

"'With respect to the handling of public funds, the legislature is in a position similar to that of a trustee, and the rule of fiduciary law that a trustee shall not be allowed to advantage himself in dealing with trust funds is apposite.'

"The caption of S.B. No. 163 is clear in '...authorizing the State Department of Public Welfare to accept and expend any Federal moneys allocated to the said Department for any projects or programs established to carry out the purposes of this Act and for administrative expenses and/or any other expenses incident to the administration of said projects or programs...'

"Section 2 of the Act provides that '... such funds shall be subject to withdrawals upon authorization of the Commissioner of Public Welfare...' Section 3 also repeats this provision.

"Under the statute no implementing state funds whatever is required, and the Federal funds are trust funds which are being held in custody subject to withdrawal only for the purposes and administration of the Federal statute.

"We have heretofore recognized and held that funds of similar character are to be impressed with a trust when deposited in a special account with the State Treasurer as custodian, and so held and expended by state officials. See Attorney General Opinions WW-565, WW-600, and W-1321, and authorities cited."

In Attorney General's Opinion WW-122 (1957), it was held:

"We pass to a consideration of the proper depository for the dividend checks. It is clear that the funds which have been and will be received from this stock never become 'State funds' in the sense that they could be placed in the general revenue fund and appropriated by the Legislature. The stock dividends are impressed with a trust and may be expended only for the purposes stated in the deed of gift. Furthermore, we think it is apparent that it was not

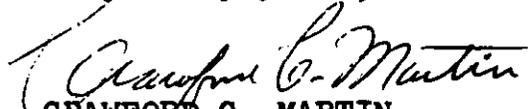
the intention of the settlor that these funds be placed within some special fund in the State Treasury because the State's title to the stock and any revenues therefrom would terminate should the State fail to comply with the condition of the gift. In such event, any revenues then on hand could not revert to the Grantor, her heirs or assigns upon giving notice to the State Parks Board because a legislative appropriation would be necessary to withdraw said revenues from the State Treasury."

In view of the foregoing, we conclude that the Federal funds mentioned in your request constitute special funds held in trust by the state, and that interest derived from said funds becomes a part of the trust funds, and can only be expended for the purposes for which the moneys were granted. Since none of the moneys were granted for the general operation of state government but on the contrary were granted for specific purposes, you are advised that depository interest earned on the special funds should be deposited to the credit of the special funds rather than the General Revenue Fund. The purpose for which federal grants may be expended is governed by the Acts of Congress, and the Legislature cannot authorize such grants to be expended for purposes not included in the grants.

S U M M A R Y

Depository interest earned on special constitutional funds or federal trust funds created for specific purposes should be deposited to the credit of those specific funds rather than the General Revenue Fund.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Hon. Jesse James, Page 9 (M-468)

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