



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 3, 1995

Ms. Janie D. Fields
Executive Director
Children's Trust Fund of Texas Council
8929 Shoal Creek Boulevard, Suite 200
Austin, Texas 78757-6854

Letter Opinion No. 95-004

Re: Whether the children's trust fund created pursuant to chapter 74 of the Human Resources Code may be abolished under section 403.094 of the Government Code, and related questions (ID# 30789)

Dear Ms. Fields:

On behalf of the Children's Trust Fund of Texas Council ("CTFTC"), formerly the Council on Child Abuse and Neglect Prevention, you ask several questions about the CTFTC operating fund (the "operating fund") and the children's trust fund. The CTFTC is a state agency created under chapter 74 of the Human Resources Code responsible for planning and administering the expenditure of funds for child abuse and neglect prevention programs. *See* Hum. Res. Code §§ 74.002(a), .003. The operating fund and the children's trust fund are also established under that chapter. Section 118.022 of the Local Government Code requires county clerks to send the comptroller \$12.50 of each fee collected for the issuance of a marriage license or declaration of informal marriage and requires the comptroller to deposit the money "to the credit of the children's trust fund established under Section 74.006, Human Resources Code," Local Gov't Code § 118.022(b). The statutory predecessor to section 118.022 was enacted in 1985. Act of May 17, 1985, 69th Leg., R.S., ch. 420, § 4, 1985 Tex. Gen. Laws 1523, 1526.

Section 74.006 of the Human Resources Code provides the following with respect to the children's trust fund:

(a) The children's trust fund is established as a trust fund in the State Treasury.

(b) The legislature may not appropriate the money contained in the trust fund.

(c) The council may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year the council may not transfer more than 50 percent of the money that was contained in the trust fund on the first day of that fiscal year. The money transferred to the operating fund under this subsection may be used only for child abuse and neglect prevention programs. The council may also transfer funds contained in the operating fund to the trust fund at any time. This subsection expires August 31, 1996.

Section 74.007 of the Human Resources Code provides as follows with respect to the operating fund:

(a) The Children's Trust Fund of Texas Council operating fund is a special fund in the state treasury.

(b) Beginning September 1, 1996, any interest earned on funds deposited in the trust fund shall be deposited in the operating fund. Administrative costs allowed in Section 74.005 shall be taken from the operating fund. Any interest earned before September 1, 1996, shall remain in the trust fund. The council may also transfer funds contained in the operating fund to the trust fund at any time.

(c) The legislature may appropriate the money in the operating fund to carry out the provisions of this chapter.

We paraphrase your questions below:

1. Is the children's trust fund a *trust fund* which is exempt from abolition or merger under section 403.094 of the Government Code, and which is exempt from division under section 403.095(b) of the Government Code?
2. If the children's trust fund is not exempt, may existing funds be appropriated by the legislature or otherwise used by any other state agency?
3. If the operating fund is indeed exempt from loss of dedication, may funds in the children's trust fund be transferred to the operating fund and be exempt from legislative appropriation?

You ask these questions as a result of the November 1994 Texas Comprehensive Report on State Funds (the "report") prepared by the Funds Review Advisory Committee (the "committee"). The committee is created pursuant to section 403.096 of the Government Code and is required to prepare a periodic report on existing special funds, accounts, and dedication of revenue. "The report shall contain recommendations concerning whether to continue or eliminate any funds, accounts, or dedications." Gov't Code § 403.096(c).

The report concludes that the children's trust fund, a non-consolidated fund,¹ contains some dedicated fund revenues subject to loss of dedication under section 403.094 of the Government Code. "The previously dedicated revenues will be deposited to the

¹Section 403.094 of the Government Code permits the comptroller, with the concurrence of the treasurer, to consolidate certain funds into the general revenue fund by August 31, 1993. Based on the report, it appears that the comptroller has consolidated the operating fund but not the children's trust fund. We do not understand you to inquire about the comptroller's action with respect to consolidation.

General Revenue Fund.” Nov. 1994 Funds Review Advisory Comm. Comprehensive Report on State Funds 1. The report suggests that the children’s trust fund was not consolidated because of its nature as a trust fund, but that it is subject to loss of dedication under section 403.094 because it receives its revenue from a statutory dedication.² *Id.* at 3. The report also concludes that the operating fund, a consolidated fund, is exempt from loss of dedication.³ *Id.* at 1, 4. In essence, you ask whether the committee’s conclusion with respect to the children’s trust fund is correct. We do not understand you to question the committee’s conclusion with respect to the operating fund.

Subsection (h) of section 403.094 provides as follows:

All funds or special accounts in the state treasury in existence on August 31, 1995, established by state statute dedicating state revenue for a particular purpose or entity are abolished on that date, *and all statutory dedications of state revenue, other than statutory dedications enacted to comply with state constitutional or federal requirements,⁴ enacted before that date are null and void as of that date.* This subsection does not abolish a dedication of revenue that is reenacted by the legislature after September 1, 1991, or that is expressly exempted or excluded from the application of this subsection. [Emphasis added; footnote added.]

Subsection (j) provides as follows:

This section does not apply to:

- (1) funds outside the treasury;
- (2) trust funds . . . ;
- (3) funds created by the constitution or a court;
- (4) funds for which separate accounting is required by federal law; or
- (5) funds for revenue to be expended only by an agency or entity in the judicial branch of government.

²Appendix XII of the report states that the children’s trust fund “[has] not been consolidated but [has] some revenues dedicated by statute. These revenues will be subject to loss of dedication and will be deposited into the General Revenue Fund beginning September 1, 1995.”

³Appendix XI of the report states that the operating fund “[a]ccount remains consolidated but is exempt from loss of dedication due to the trust and federal nature of revenue received.”

⁴We assume that the children’s trust fund was not enacted to comply with state constitutional or federal requirements.

The children's trust fund is excepted from section 403.094 by virtue of subsection (j)(2). The statutory dedication of state revenue in section 118.022 of the Local Government Code is, however, expressly subject to the language in subsection (h) italicized above. This language makes that statutory dedication of revenue, separate and apart from children's trust fund, subject to abolition. To our knowledge, the legislature has not reenacted this dedication of revenue since September 1, 1991, nor is the dedication of revenue expressly exempted or excluded from the application of this subsection. Subsection (j) provides exceptions for certain types of funds, but not for statutory dedications. Therefore, we believe that while the children's trust fund may not be abolished under subsection (h), the statutory dedication of state revenue in section 118.022 must be.

In sum, unless the legislature takes some action beforehand, the dedicated revenue source for the children's trust fund will cease to exist on August 31, 1995. The children's trust fund, and the corpus of that fund as of August 31, 1995, are not subject to abolition and will continue to exist after that date. We believe that the committee's report is in error to the extent it can be read to suggest that the children's trust fund itself is subject to abolition.

You also ask whether the children's trust fund is excepted from section 403.095(b) of the Government Code, which provides in pertinent part as follows:

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, at the end of a biennium, exceed the amount appropriated are available for general governmental purposes. This subsection does not apply to revenues in:

....

(2) trust funds

Clearly, the children's trust fund is excepted from section 403.095(b) by operation of subsection (b)(2).

Finally, you ask whether funds in the children's trust fund may be transferred to the operating fund and be exempt from legislative appropriation. In light of our conclusion that section 403.094 does not permit the abolition of the children's trust fund, we do not believe it is necessary for us to reach this question. We do note, however, that sections 74.006(c) and 74.007(b) of the Human Resources Code restrict the extent to which funds may be transferred from the children's trust fund to the operating fund and how such funds may be used. *See supra* pp. 1, 2.

S U M M A R Y

Under section 403.094 of the Government Code, the dedicated revenue source for the children's trust fund set forth in section 118.022 of the Local Government Code will cease to exist on August 31, 1995, unless the legislature takes certain action before that date. The children's trust fund, and the corpus of that fund as of August 31, 1995, are not subject to abolition under section 403.094 and will continue to exist after that date. The children's trust fund is excepted from section 403.095(b) of the Government Code by operation of subsection (b)(2).

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee