



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WILLIAMSON~~
ATTORNEY GENERAL

Honorable Tom C. King
State Auditor and Efficiency Expert
Austin, Texas

Dear Sir:

Opinion No. 0-953
Re: Appropriation from Dental
Registration Fund for Dental
Board.

This will acknowledge receipt of your letter of October 24, 1939, wherein you request the opinion of this department upon the questions quoted below.

It appears from your letter that in Chapter 244, page 606, Acts of the Forty-fourth Legislature, Regular Session, 1935, there was set up the State Board of Dental Examiners, and the Legislature therein provided that the annual registration fees collected by said Board should be placed in the State Treasury to the credit of a special fund to be known as the "Dental Registration Fund". This Act provides that all salaries and expenses of administering the Act shall be paid from this special fund. The Act specifically provides:

" . . . all expenditures from this fund shall be on order of the State Board of Dental Examiners on warrants issued by the State Comptroller for the purposes and in the amounts fixed in the general appropriation bills."

The Departmental Appropriations Bill passed by the Forty-fifth Legislature appropriated to the Board of Dental Examiners certain sums of money for designated purposes, totaling \$ 6,755.00 per annum. By rider to this appropriation, it was directed that \$200.00 per year be transferred from the Dental Registration Fund to the General Revenue Fund to pay for governmental services.

The First Called Session of the Forty-Fifth Legislature passed an Act (Chapter 4, p. 1744), the pertinent provisions of which are as follows:

"Section 3, There is hereby appropriated for the use of the State Dental Board all fees collected under Senate Bill No. 10, passed by the Forty-fourth Legislature, said fees to be used for the maintenance and expense of the Dental Board from May 15, 1937, to August 31, 1937.

"All balances remaining in said fund on August 31, 1937, are hereby appropriated for the use of the Dental Board for the biennium beginning August 31, 1937, and ending August 31, 1939."

This Act was approved and became effective July 12, 1937.

On this statement of facts you ask the following questions:

"(1) Is the Act of the called session in contravention of the Constitutional provision that no appropriation may be made for a longer term than two years?

"(2) If so, is the Act void abinitio, or only as to the period between July 12, 1939, and August 31, 1939?

"(3) Which of these Acts (the general appropriation bill or the Act of the called session) is controlling; or, are both effective so that the latter is supplementary to and cumulative of the former?"

In your letter it is stated that the Forty-fifth Legislature, in making the appropriation to the Board of Dental Examiners in the Departmental Appropriations Bill, did not specify the fund from which such appropriations could be paid. Your attention is directed to the fact that by Section 3 of the General Rider appended to the Departmental Appropriations Bill passed by the Forty-fifth Legislature, (General and Special Laws, Forty-fifth Legislature, Regular Session, 1937, p. 1491), the Legislature, by the language therein used, effectively directed that the items appropriated in that Bill for the use and benefit of the Board of Dental Examiners should be paid from the Dental Registration Fund, instead of from the General Fund. This Rider reads as follows:

"It is further provided that in the event the statutes of the State of Texas provide that any of the amounts, fees, or funds herein appropriated be paid out of local or special fees or funds, that the same be so paid out of said local or special fees and funds instead of being paid out of the General Revenue Fund.

Since the Act creating the Board of Dental Examiners contemplates that the salaries and expenses of the administration of that Act should be paid out of the Dental Registration Fund, this Rider is applicable to the appropriation made for the Board of Dental Examiners by the Forty-fifth Legislature.

You are advised that in our opinion, the Act passed by the First Called Session of the Forty-fifth Legislature makes two separate and distinct appropriations, one to endure for the period of time beginning May 15, 1937, and ending August 31, 1937, and the other beginning August 31, 1937, and ending August 31, 1939. The first appropriates all fees

collected under Senate No. 10 passed by the Forty-fourth Legislature, for the period mentioned in such appropriations, and the second appropriates only the balance remaining on hand in said fund on August 31, 1937. Since Article VII, Section 6, of our Constitution provides only that ". . . nor shall any appropriation of money be made for a longer term than two years . . .", and neither of these two separate and distinct appropriations is for a period of time longer than two years, you are advised that it is our opinion that the constitutional provision referred to is not violated by the Act of the Called Session.

The answer made to your first question renders it unnecessary to answer your second.

In answering your third question, we direct your attention to the paragraph of the Rider appended to the Departmental Appropriations Bill passed by the Forty-fifth Legislature, which reads as follows:

"(c) The appropriations herein provided are to be construed as the maximum sums to be appropriated to and for the several purposes named herein, and the amounts are intended to cover and shall cover the entire cost of the respective items, and the same shall not be supplemented from any other source; and no expenditures shall be made, nor shall any obligations be incurred, which, added to the actual expenditures, will exceed the amount herein appropriated for any of the purposes named . . ." (General and Special Laws, Forty-fifth Legislature, Regular Session, page 1489-1490).

We likewise direct your attention again to that portion of the Act creating the State Board of Dental Examiners, quoted above, which reads as follows:

". . . all expenditures from this fund shall be on order of the State Board of Dental Examiners on warrants issued by the State Comptroller for the purposes and in the amounts fixed in the general appropriation bills. . ."

It appears that the Legislature in the General Appropriation Bill for the fiscal biennium beginning August 31, 1937, provided the purposes and the amounts for which expenditures out of the Dental Registration Fund might be made by the State Board of Dental Examiners. There is nothing in that portion of the Act passed by the First Called Session of the Forty-fifth Legislature appropriating the balances remaining in the fund on August 31, 1937, which evidences the Legislative intent directly or indirectly to vary or change, insofar as such balances are concerned, the legislative policy announced by the provisions of the Departmental Appropriations Bill and by the provisions of the Act creating the Board of Dental Examiners, above quoted. There is no express repeal or modification of these provisions by the special Act

referred to, and there is nothing which appears in the Act passed by the Forty-fifth Legislature at its First Called Session which may be made the basis for the application of the doctrine of repeal or modification by implication.

You are therefore, advised that it is our opinion that it was intended by the Legislature that the balances remaining in the Dental Registration Fund on August 31, 1937, should be appropriated for the payment of those items of expense provided for the Board of Dental Registration in the Departmental Appropriations Bill passed by the Forty-fifth Legislature. It follows that we answer your third question, that the Departmental Appropriations Bill passed by the Forty-fifth Legislature controls the purposes and amounts for which the Dental Registration Board may expend the balances remaining in the Dental Registration Fund on August 31, 1937, during the fiscal biennium ending August 31, 1939.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

s/ Richard W. Fairchild

By

Richard W. Fairchild
Assistant

RWF:FG/ldw

APPROVED NOV. 6, 1939

s/ W. F. Moore
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY B. W. B.
CHAIRMAN