OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Walter C. Woodward, Chairman,
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. O-1380
Re: Disposition of fees collected under Article 3920, as amended by S. B. 404 during the current fiscal biennium.

This will acknowledge receipt of your request of August 29, 1939, for the opinion of this department construing Article 3920, as amended by S. B. 404, as the same applies to your department.

The pertinent portion of S. B. 404, Acts regular session of the 46th Legislature, amending Article 3920 of the R. C. S., reads in part as follows:

> "After August 31, 1939, all fees collected by virtue of this Article shall be deposited in the State treasury and appropriated to the use and benefit of the Board of Insurance Commissioners to be used in the payment of salaries and other expenses arising out of and in connection with the examination of insurance companies and/or the licensing of insurance companies and investigations of violations of the insurance laws of this State in such manner as provided in the general appropriation bill for the Life Insurance Division and Examining Division and Agents' License Division of the Board of Insurance Commissioners."

In so far as it is contended by you that this provision in and of itself operates as an appropriation of these

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fees for the current fiscal biennium, you are advised that we adhere to the conclusion heretofore expressed in our opinion No. O-1176, as follows:

> "Here we have no appropriation but what appears merely a direction to the Legislature itself to later make the appropriation in the general appropriation bill."

It is quite true, in this connection, that the intent of the law is the law itself and we, as well as the court, are required, in rendering opinions, to look diligently for the intention of the Legislature. However, "when the intent is plainly expressed in the language of the statute, it must be given effect without attempting to construe or interpret the law." Tex. Jur., vol. 39 p. 166. In our opinion, the legislative intent that the appropriation should be made in the departmental appropriation bill is plainly and clearly expressed in the language used in the enactment above quoted, and therefore we are not at liberty to resort to construction.

The next question to determine is whether, in the departmental appropriation bill passed by the 46th Legislature, there is found any provision operating as an appropriation of the fees with which the Legislature was dealing in S. B. 404. In this connection, it is to be observed that in the departmental appropriation bill the Legislature provided therein specific items for the Life Insurance Division, the Examining Division, and the Agents' License Division of the Board of Insurance Commissioners. By Sec. 3 of the special rider appended to the appropriation for your department, which appears on pages "33" and "34" of S. B. No. 427 as passed by the 46th Legislature, it is provided "that the foregoing appropriations for the Life Division (except the appropriations for the Examining Division and the Licensing Division which has hereinabove been provided for) shall be paid out of the general revenue fund." This rider, taken into connection with the preceding portions of the appropriation bill relating to your department, effectively provides that only the appropriations for the Life Insurance Division shall be paid out of the general fund, and that the appropriations for the Examining Division and the Licensing Division shall be paid out of the special funds indicated in the appropriation

in connection with such particular divisions.

Sec. 3 of the general rider appended to S. B. 427, which appears on page "150" of the Senate journal, reads as follows:

> "It is further provided that in the event the statutes of the State of Texas provides that any amount, fees or funds herein appropriated to be paid out of local or special fees or funds, that the same be so paid out of the said local or special fees or funds instead of being paid out of the general revenue fund."

The effect of this is to provide that if the statutes of the State of Texas dedicate local or special fees or funds to the payment of certain items of expense, amounts appropriated for payment of such items shall be paid from the said special or local fees or funds. If the appropriation is from the general fund, and the statute dedicates local or special fees or funds to the payment of such items, the provision quoted operates to apply such local or special fees or funds toward the payment of such appropriation before resort may be had to the general fund. And if the statutes should provide that such items of expense should be paid only from dedicated local or special fees or funds, this quoted provision would operate to require the payment of amounts appropriated for such items exclusively from said local or special fees or funds, instead of from the general fund.

In other words, it seems that this rider provision was intended by the Legislature as a blanket clause correcting appropriations inadvertently made from the general fund where special fees or funds are available for their payment and appropriations inadvertently made from only one special fee or fund where the statutes of the State contemplated the application of other local or special fees or funds toward the payment of such appropriations as well.

Construing the provisions quoted above from S. B. Nos. 404 and 427 together, we are of the opinion that it was the legislative intent to require that the

fees collected under Article 3920, as amended by S. B. No. 404, should, during the current fiscal biennium, be applied toward the "payment of salaries and other expenses arising out of and in connection with the examination of insurance companies and/or the licensing of insurance companies and investigations of violations of the insurance laws of this State." These fees are not available to the Department of Insurance generally, to be expended as it may see fit, but such fees may be applied only toward the payment of the items of salary and expense "provided in the general appropriation bill for the Life Insurance Division and the Examining Division and Agents' License Division of the Board of Insurance Commissioners."

In so far as our opinion No. O-1176 conflicts with the holding herein made, said opinion is expressly overruled and withdrawn.

Trusting that the foregoing answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By R. W. Fairchild

R. W. Fairchild
Assistant

RWF-MR

APPROVED NOV 22, 1939

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN