



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-3639
Re: Availability and duration of
appropriation made by Section
25, Article 17 of House Bill 8,
47th Legislature.

Your letter of June 3 seeks the opinion of this department upon the following questions:

1. Whether the one per cent of the total gross amount of taxes collected under Section 25 of Article 17 is now available for the use and benefit of the Comptroller in the enforcement of the Motor Fuel Tax Act.

2. If so, whether this is a two year appropriation or whether it is available until September 1, the time when the ensuing General Appropriation Bill becomes effective.

Section 25 of Article 17 of the Act referred to reads as follows:

"Before any diversion or allocation of the Motor Fuel Tax collected under the provisions of this Article is made, one per cent of the gross amount of said tax shall be set aside in the State Treasury in a special fund, subject to the use of the Comptroller in the administration and enforcement of the provisions of this Article, and so much of the said proceeds of one per cent of the Motor Fuel Tax paid monthly as may be needed in such administration and enforcement be and is hereby appropriated for said purpose. Any unexpended portion of said fund

Honorable George H. Sheppard, page 2

so specified shall at the end of each biennium revert to the respective funds or accounts in proper proportions to which the Motor Fuel Tax Fund is allocated at the end of each biennium."

It is to be observed that the special fund thus created is specifically appropriated, by the use of the language "so much of the said proceeds of one per cent of the Motor Fuel Tax paid monthly as may be needed in such administration and enforcement . . . is hereby appropriated for said purpose."

The Act does not attempt to provide, specifically, the period for which such appropriation shall be available. Obviously, under the provisions of Article 8, Section 6, of our Constitution, limiting appropriations to two year periods, this appropriation cannot be sustained for a longer period than two years from the effective date of the Act. From the authorities and reasoning cited in our Opinion No. 0-3621, and in our Opinion No. 0-3651, we are of the opinion that the Legislature intended that the appropriation made in Section 25 should be available for the constitutional period of two years allowed for appropriations, subject to such changes in the appropriation as may be effected by the departmental appropriation bill for the fiscal biennium beginning September 1, 1941. See Article 21, Section 6, of House Bill 8. Under the provisions of Section 6 of Article 21 of House Bill 8, the appropriation made by Section 25 of Article 17 will be superseded by the appropriation, if any, of such fund provided for in the departmental appropriation bill effective September 1st, 1941. When the Legislature thus acts, in the departmental appropriation bill or in any other bill subsequent to House Bill 8, appropriating from the special fund created by Section 25 of Article 17 of House Bill 8, the appropriation made by that section will no longer be effective, under the provisions of Section 6 of Article 21 of House Bill 8.

Your first question is therefore answered that the special fund for enforcement and administration created under Section 25, Article 17, House Bill 8, is available for the use and benefit of the Comptroller in the enforcement of the Motor Fuel Tax Act from and after the effective date of House Bill 8.

In answer to your second question, you are advised that the appropriation made by Section 25 will not be available

Honorable George H. Sheppard, page 3

in any event beyond two years from the effective date of House Bill 8, and further, that, by virtue of the provisions of Section 6, Article 21, House Bill 8, the appropriation made by Section 25 will cease to be effective for any purpose after the effective date of any Act by the Legislature, either in the department appropriation bill or any other appropriation bill subsequent to House Bill 8, wherein the Legislature makes appropriations from the special fund created by Section 25, Article 17, House Bill 8.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild

R. W. Fairchild
Assistant

RWF:db

APPROVED JUN 15, 1941

Islem R. Lewis

Acting

~~DEPUTY ASSISTANT~~
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
RWF