



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Buford D. Battle
State Auditor and Efficiency Expert
Austin, Texas

Dear Sir:

Opinion No. 0-4111
Re: Method of handling
appropriations made
from General Revenue
Fund to higher in-
stitutions of learning.

We quote in full below your letter of October 7, 1941, asking the opinion of this department with reference to such matters described therein:

"During the course of our audit of a higher institution of learning for the past fiscal year, certain unusual practices have come to our attention.

"This office desires your opinion as to whether or not any of the three following transactions are contrary to law:

"Case No. 1. The college in question received an appropriation from General Revenue of the State by the 46th Legislature. A certain amount was certified as due an employee, and a General Revenue Warrant of the State was issued, payable out of the institution's State appropriation. The institution, after receipt of the warrant, found that the employee was not due the warrant or any portion of it, and proceeded to deposit the warrant in the institution's local fund bank account.

Honorable Buford D. Battle - Page 2

"Case No. 2. A General Revenue Warrant of the State was issued to an employee for her January salary. Although the employee left the employ of the college on January 15th, the warrant covered an entire month's salary. The employee discounted the warrant and received one-half (1/2) of it and returned the remainder to the College authorities, who deposited it in the institution's local fund bank account.

"Case No. 3. A General Revenue Warrant of the State was issued to an employee for her October salary. Although she resigned on October 15th, the warrant was written to her for the entire month, and she discounted it, keeping one-half (1/2) for herself and the other one-half (1/2) was paid by the institutional cashier to another employee, who supposedly replaced the original employee.

"Should further information be useful in answering these questions, please let us know."

An appropriation is the setting apart from the public revenues of a certain sum of money for a specified purpose, in such manner that the executive officers of the government are authorized to apply that money, and no more, to that purpose, and to no other. Words and Phrases, Permanent Edition, Volume 3, Pages 819 et seq.; State v. Moore, 69 N. W. 373, 376, 50 Neb. 88, 61 Amer. State Rep. 538; McCombs v. Dallas County (Civ. App.) 136 S.W. (2d) 975.

Every appropriation has the effect of creating a special fund, which is to be expended only for the purpose for which the appropriation was made. To draw a warrant against the appropriation, ostensibly to apply the funds to the purpose for which they are provided, and then to deposit the money to the credit of the local fund of the college, is to apply the money appropriated to a purpose for which it was not authorized by the Legislature. It follows that each of the first two fact situations set

Honorable Buford D. Battle- Page 3

out in your letter present instances of unauthorized and therefore illegal diversions of the public moneys involved.

With respect to the third fact situation presented in your letter, you are advised that warrants against the appropriations made to pay the salaries of employees of the various departments and institutions of learning of this State are in no instance to be drawn in favor of the department head or school authority; but in each case the warrant against the appropriation is to be drawn in favor of the person rendering the service for which the appropriation is provided, and for no greater amount than is actually due such person. The appropriation provides authority for the department or school head to enter into contracts with reference thereto, but the money provided is not to be drawn from the Treasury by the department or school head and by him dispersed in cash to the employees; the claim of the employee for payment from the appropriation is to be presented to the Comptroller on the institutional pay roll, certified as correct by the school head, and the warrant is to be drawn in favor of the employee himself. See Articles 4344, 4350, 4355, 4356, 4357, 4358 and 4359, Revised Civil Statutes, 1925.

It follows that in the third instance given in your letter, the warrant should have been drawn in favor of the employee, as payee thereof, only for the amount actually due her as salary, to wit, salary for one-half month, and a claim should have been presented to the Comptroller for the issuance of a separate warrant against the same appropriation for the amount of salary due the employee who replaced her. The action of the school authorities in certifying the claim for the issuance of a warrant for an entire month's salary to the original employee, when only one-half month's salary was due to her, and in delivering the warrant to the original employee for the full month's salary, procuring cash from the original employee, the payee of the warrant, for the one-half month's salary not due her, and paying over the cash direct to the

Honorable Buford D. Battle - Page 4

employee who replaced the original employee, was without authority of law, and therefore illegal.

APPROVED OCT 20 1941

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FIRST DEPT. OF SOCIAL SECURITY
ATTORNEY GENERAL

RWF:WFS

Yours very truly

ATTORNEY GENERAL OF TEXAS

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By

R. W. Fairchild
Assistant

