



OFFICE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS

WIDE DISTRIB.
BY GENERAL

April 10, 1950

Hon. John Ben Shepperd
Secretary of State
Austin, Texas

Opinion No. V-1043.

Re: The validity of S.B. No. 35,
Acts 51st Legislature, 1st
Called Session, 1950, making
an appropriation from the Se-
curities Act Fund to defray
expenses of publishing the laws
of said called session.

Dear Mr. Shepperd:

You request the opinion of this office as to the validity of Senate Bill No. 35 passed by the First Called Session of the 51st Legislature, which is as follows:

"AN ACT making an emergency appropriation for the use of the Secretary of State for the purpose of publishing the Current Laws; and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. There is hereby appropriated for the use of the Secretary of State, out of any funds in the Securities Act Fund not heretofore otherwise appropriated, the sum of Two Thousand (\$2,000.00) Dollars to be expended for the purpose of compiling, editing, indexing, and distributing the Current Laws enacted by the 51st Legislature.

"Sec. 2. The fact that the appropriations heretofore made to the Secretary of State for the purposes named in Section 1 of this Act are inadequate, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended; and the same is hereby suspended, and this Act shall take effect and be in full force and effect from and after its passage, and it is so enacted."

Under the authority of Gulf Insurance Co. v. James, 143 Tex. 424, 185 S.W.2d 966 (1945), we hold that this Act is valid and the appropriated funds may be used for the purpose specified

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in the Act. The Court said:

"We agree with the holding of the Court of Civil Appeals that the Legislature has the right to transfer the balance on hand in these special funds to the General Revenue Fund. In so doing the Legislature does not violate the provisions of Article VIII, Section 7, of the Constitution, Vernon's Ann. St., which provides that 'The Legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may, or ought to, come into the Treasury; * * *.' In the case of Brazos River Conservation & Reclamation District v. McCraw, 126 Tex. 506, 91 S.W.2d 665, this Court held that the above-quoted constitutional inhibition applies only to special funds created by the Constitution, and not to special funds created by statute. The special funds here under consideration were created by statute, and not by the Constitution.

" . . . The State could have required the funds collected for the purposes indicated to be paid directly to the General Revenue Fund in the first instance. Ex Parte Gregory, 20 Tex. App. 210, 219, 54 Am. Rep. 516; Brown v. City of Galveston, 97 Tex. 1, 17, 75 S.W. 488. If it had done so, then certainly the excess, if any, would have been available for use for general purposes. The propriety and fairness of an enactment authorizing the use of the unexpended balances in these special funds for general purposes present legislative rather than judicial considerations."

You are, therefore, advised that it is our opinion that Senate Bill No. 35 makes a valid appropriation and that the funds therein appropriated may be used for the purpose specified in the Act.

SUMMARY

The Legislature may make an appropriation from statutory special funds in the same manner and to the same extent as it may make appropriation from the General Fund. Gulf Insurance Co. v. James, 143 Tex. 424, 185 S.W.2d 966 (1945).

Very truly yours,

PRICE DANIEL
Attorney General

APPROVED:

W. V. Geppert
Taxation Division

Charles D. Mathews
Executive Assistant
LPL/mwb

By


L. P. Lollar
Assistant