



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

April 11, 1955.

Hon. Crawford C. Martin, Chairman,
Senate Finance Committee

Hon. Max C. Smith, Chairman,
House Committee on Appropriations,
54th Legislature,
Austin, Texas.

Gentlemen:

Opinion No. MS-196

Re: Questions relating to
the status and use of
funds received by licens-
ing and regulatory agen-
cies of the State through
statutory examination and
licensing fees.

You have requested an opinion on the following questions:

"1. Are funds received by licensing or regula-
tory agencies of the State through statutory examina-
tion and licensing fees State funds or moneys?

"2. Is it legal for such funds or moneys to be
kept outside the State Treasury, in the sense that
they are beyond the custody and safekeeping of the
Treasury?

"3. Does the Legislature have the authority to
appropriate and to regulate the expenditures of such
funds kept in local banks and which are outside the
custody and safekeeping of the Treasury?"

Money received by licensing or regulatory agencies of
the State by the collection of licensing fees become State funds
whether it is deposited in the State Treasury or not. Texas
Pharmaceutical Association v. Dooley, 90 S.W. 2d 328, 330 (Tex.
Civ. App. 1936).

This case was a mandamus action brought by the Pharmacue-
tical Association to compel the Board of Pharmacy to turn over to
the Association the unexpended balance of fees collected by the
Board. In denying the mandamus the Court stated:

"If the fees so collected be treated merely
as license fees, levied and collected under the
police power of the state, and not as taxes, the

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appropriation of the major portion of same to a private corporation in nowise charged with the enforcement of the act would be clearly void.

. . . . "On the other hand, if these fees provided for in Section 14 above quoted and appropriated to appellant be considered as not reasonably necessary for the Board of Pharmacy to discharge its duties under the law and to enforce the same, but as levied for purposes of revenue, then clearly we think they become public funds or public moneys, whether deposited in the state treasury or not, and the attempted grant thereof to appellant private corporation is in clear violation of section 51, art. 3 of the Constitution."

The only fees required by the Constitution of Texas to be paid into the State Treasury are fees collected by the Comptroller of Public Accounts, the Treasurer and the Commissioner of the General Land Office. Texas Constitution, Article IV, Section 23. It is, therefore, our opinion that the Legislature may make the licensing or regulatory board collecting the fees the custodian of such state funds without requiring that the money be paid into the State Treasury.

Since these fees are state funds, the Legislature has the authority to appropriate and regulate the expenditure of such funds. Atkins v. State Highway Department, 201 S.W. 226, 229 (Tex. Civ. App. 1918).

You are therefore advised that licensing fees are state funds subject to appropriation and regulation by the

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Legislature and may be paid into the State Treasury or placed
in local banks as directed by the Legislature.

APPROVED:

J. C. Davis, Jr.,
County Affairs

John Atchison
Reviewer

J. A. Amis, Jr.
Reviewer

Robert S. Trotti
First Assistant

John Ben Shepperd
Attorney General

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By *John Reeves*
John Reeves
Assistant