



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

March 2, 1953

Affirmed by *W.M. 188*

Hon. H. A. Beckwith  
Chairman  
Board of Water Engineers  
Austin, Texas

Opinion No. S-14

Re: Disposition of deposit  
for costs made with the  
Board of Water Engineers  
under authority of Arti-  
cle 7880-21, V.C.S.

Dear Sir:

Your opinion request asks for interpretation of Article 7880-21, V.C.S., a portion of which reads as follows:

" . . . A petition to be filed with said Board must be accompanied by a money deposit of Two Hundred and Fifty (\$250.00) Dollars to pay all costs which may be incurred in such proceedings: After the payment of such costs any unexpended balance must be repaid to petitioners, or to their attorney of record, whose receipt therefor shall be sufficient. . . ."

The article further provides that when an appeal is perfected from the Board's decision, "the party appellant shall pay the actual cost of the transcript of the record, which shall be assessed as part of the costs incurred on such appeal."

Your letter, after quoting said statute, reads as follows:

"In processing applications for the creation of water control and improvement districts under said statute and under Article 7880-3a, VACS, we would like your opinion in answer to the following questions:

- "1. In computing the 'costs which may be incurred in such proceedings', in each case wherein a petition is made under the above statute, can this Board figure in the time of its employees in the handling of the petition, the time spent by the Board members and any other expenses of this office relative to the processing of said individual petition?
2. If so, can the money thus paid out of the cost deposit by the Board to itself be expended by the Board as local funds, or must same be placed in the general revenue fund of the State at the conclusion of the proceeding?
3. If such money constitutes local funds, may the present procedure of placing these funds in a local bank be continued, and can the Board make expenditures therefrom?
4. For what specific purposes may the Board expend the money thus received?
5. Can we compute and collect our costs against the costs deposits now on hand which have not been returned?

"For many years, the Board of Water Engineers has returned this deposit, except for actual expenses of travel and other items incident to the investigation of the district, which have been deducted and paid on sworn accounts in the same manner and with the same detail used in presenting claims against appropriated funds. The new proposal has been suggested by one member of the Board; and your opinion is desired as to the procedure to be followed in connection with the handling of the deposit."

In Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559, 561 (1946), the following is said concerning official fees:

"That the fixing of official fees is a matter of general legislation, and is a 'subject' of general legislation within the meaning of Article III, Section 35, above, cannot

be questioned. There are many such enactments in our statutes. These statutes have been strictly construed against allowing a fee by implication, as regards both the fixing of the fee and the officer entitled thereto. McLennan County v. Boggess, 104 Tex. 311, 137 S.W. 346. . . And in State v. Moore, 57 Tex. 307 . . . Mr. Justice Stayton said: 'It is not believed that any well considered case can be found in which a public officer has been permitted to collect fees unless the same are provided for, and the amount thereof declared by law.'" (Emphasis added.)

To the same effect, see McCalla v. City of Rockdale, 112 Tex. 209, 246 S.W. 654 (1922); Nueces County v. Currington, 139 Tex. 297, 162 S.W.2d 687 (1942); 9 Tex.Jur. 250; 14 C.J.S. 1224.

In the second paragraph of Article 7880-21, V.C.S., provision is made for a charge for a transcript of the record in the event of an appeal. This article deals with water control and improvement districts. The general fee statute under which the Board of Water Engineers operates is Article 7532, V.C.S. The fee schedule set out in that article is self-explanatory. These articles are the only statutes authorizing a charge to be made in connection with the creation of a water control and improvement district; and where no appeal is taken, Article 7532 alone is applicable. It makes no provision for a charge for time spent by Board members or employees, and hence none can be made. The only office expenses authorized to be charged against the petitioners' deposit are those specifically itemized in Article 7532, plus, in the event of an appeal, the aforesaid transcript fee.

It follows from the above that items of travel and investigation expenses referred to in the last paragraph of your letter may not be charged against the deposit. Article 7490, V.C.S., states that travel expenses shall be received "from the State," and provision therefor is made for your agency in the general appropriation bill for the current biennium.

Your second and third questions are governed by Article 7533, V.C.S., which reads as follows:

"The fees and charges collected in accordance with the provisions of this chapter shall be immediately deposited in the State Treasury to the credit of the general revenue and full and detailed verified monthly and annual reports of all such receipts, as well as of the expenditures of the said Board, shall be filed with the Comptroller of Public Accounts."

It is clear from this article that fees earned under Articles 7532 and 7880-21 must "be immediately deposited in the State Treasury to the credit of the general revenue" and cannot be expended by the Board as local funds.

Article 7880-21 provides that after payment of costs, the unexpended balance is to be returned to petitioners or their attorney of record. Since the amount of the costs cannot be finally determined until the conclusion of the proceeding, the refund should be made at that time. If you have on hand any deposits made under Article 7880-21, concerning which the proceedings have been finally concluded, you should deduct from such deposit the earned fees, as above stated, and deposit same in the State Treasury to the credit of the general revenue, refunding the balance of the deposit to the petitioners or their attorney of record.

The conclusions herein expressed deal only with deposits made under the authority of Article 7880-21.

#### SUMMARY

The Board of Water Engineers may deduct from the deposit made under Article 7880-21, V.C.S., only the fees or costs specifically itemized in Article 7532, V.C.S., and the transcript fee provided in Article 7880-21 in the event of an appeal. These fees or costs when

earned cannot be expended by the Board as local funds, but they must be deposited immediately in the State Treasury to the credit of the general revenue. At the conclusion of the proceedings, the balance of the deposit should be refunded to the petitioners or their attorney of record.

APPROVED:

Jesse P. Luton, Jr.  
Land Division

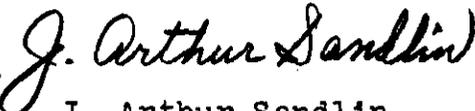
Willis G. Gresham  
Reviewer

Robert S. Trotti  
First Assistant

John Ben Shepperd  
Attorney General

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By   
J. Arthur Sandlin  
Assistant

JAS:bt