



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

December 13, 1957

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Station  
Austin 11, Texas

Opinion No. WW-311

Re: The authority of the Comptroller of Public Accounts, under the Constitution of Texas, Art. VII, Sec. 17, as adopted in 1947 and 1956, to authorize remittances to certain colleges of money received by the State after December 31, 1957, from taxes theretofore levied by the 1947 amendment, when such remittances are not to be applied on notes or bonds issued pursuant to such amendment.

Dear Mr. Calvert:

Your letter requesting our opinion presents the following question:

"With respect to Section 17 of Article VII, added as an amendment to the Constitution of Texas on August 23, 1947, will it be proper for the Comptroller of Public Accounts to authorize remittances to the governing boards of the colleges named therein of money received by the State after December 31, 1957, from taxes levied during the initial ten-year period ending on said date, when such remittances are not to be applied on notes or bonds issued pursuant to such amendment to the Constitution?"

Your letter also states:

"The experience of this office indicates that over 60% of the money from taxes levied by the

original amendment for the year 1957 will not reach the State Treasury until after December 31, 1957. In addition, for several years after December 31, 1957, the close of the initial ten-year period, money from taxes levied during that period, but which were not timely paid and became delinquent, will come into the Treasury."

Section 17 of Article VII was added to the Constitution of Texas on August 23, 1947; for convenience it will be designated as the "1947 Amendment." A subsequent amendment was adopted on November 6, 1956; it will be designated as the "1956 Amendment."

The 1947 Amendment authorized the issuance of bonds or notes by the governing boards of certain named colleges "for the purpose of acquiring, constructing and initially equipping buildings, or other permanent improvements at the . . . institutions . . .", such bonds or notes to be secured by the pledge of a special State ad valorem tax on property of Five (5¢) Cents on the one hundred dollars valuation as specifically allocated in the amendment on a percentage basis to the respective colleges.

Subsequently, an opinion of this Department (A.G. Op. No.V-799, 1949, citing A.G. Op. No.V-798, 1949) construing only the 1947 Amendment, concluded as follows:

"The proceeds of the Five (5¢) Cents tax levied by Section 17 of Article VII, Constitution of Texas, may not be withdrawn from the State Treasury for any purpose other than payment of principal and interest upon bonds or notes authorized to be issued under such constitutional provision."

But the 1947 Amendment will be superseded or repealed on January 1, 1958, by the express language of the 1956 Amendment and thereafter authority for the issuance of bonds and notes under the 1947 Amendment will be non-existent. Nevertheless, the 1956 Amendment expressly preserves the "allocation of the revenue"

Honorable Robert S. Calvert, page #3 (WW-311)

made by the 1947 Amendment and specifies that such allotment is not to be affected "in any way" by the provisions of the 1956 Amendment.

The allocation of funds in the 1947 Amendment begins in the following language:

"Funds raised from said Five (5¢) Cents tax levy for the ten (10) year period beginning January 1, 1948, are hereby allocated to the following institutions of higher learning, and in the following proportions to wit:  
. . ." (Emphasis added)

There follows a list of the institutions and the percentage of the total tax collections "hereby allocated" to each.

The 1956 Amendment provides:

"This amendment shall be self-enacting; provided, however, it shall not become operative or effective upon its adoption so as to supersede or repeal the former provisions of this Section, but shall become so operative and effective on January 1, 1958; . . ., nor shall the provisions of this amendment affect in any way the prior allocation of the revenue for the ten-year period beginning January 1, 1948, as heretofore authorized by (the 1947 Amendment)." (Emphasis and matter in parentheses supplied)

In order to ascertain the intent of the electorate in approving the adoption of the two amendments in question it is necessary to construe them together. The 1947 Amendment clearly provided that the tax "funds are hereby allocated" to the colleges named; the 1956 Amendment just as clearly provides that such prior allocation of revenue shall not be affected in any way.

Honorable Robert S. Calvert, page #4 (WW-311)

The intent is clear to the effect that the colleges named in the 1947 Amendment are to receive, as allocated, their respective shares of all the tax money received, or to be received, by the State Treasury as a result of the levy made by the 1947 Amendment, even though on January 1, 1958, their power to issue bonds and notes under the 1947 Amendment will no longer exist. Under no other construction could the provision of the 1956 Amendment be given effect, wherein it is stated:

" . . . , nor shall the provisions of this amendment affect in any way the prior allocation of the revenue for the ten-year period beginning January 1, 1948, as heretofore authorized by the provisions of Section 17 of Article VII of this Constitution as adopted August 23, 1947." (Emphasis added)

It is apparent from the language of the 1947 Amendment that the tax was levied on behalf of the colleges for the purpose of their acquiring, constructing and initially equipping buildings, or other permanent improvements at the designated colleges. It is fundamental that money from taxes levied and collected for a certain purpose may be expended for such purpose only. Carroll v. Williams, 109 Tex. 155, 202 S.W. 504 (1918); Spears v. City of South Houston, 137 S.W. 2d 197 (Civ.App. 1940, affd. 136 Tex. 218, 150 S.W. 2d 74).

You are, therefore, respectfully advised that your question is answered in the affirmative, the remittances to be made to the colleges named and apportioned among them in accordance with the allocation made in the 1947 Amendment, and such funds are to be used by the colleges exclusively for the purpose described in the preceding paragraph.

#### SUMMARY

The Comptroller of Public Accounts may authorize remittances to the colleges named in the 1947 Amendment to the Constitution of Texas, Article VII, Section 17, in accordance with the allocation therein made,

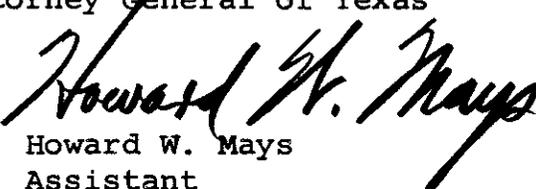
Honorable Robert S. Calvert, page #5 (wW-311)

of money received by the State after December 31, 1957, from taxes theretofore levied by said 1947 Amendment, although such remittances are not to be applied on notes or bonds issued pursuant to such amendment.

Very truly yours,

WILL WILSON  
Attorney General of Texas

By

  
Howard W. Mays  
Assistant

APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

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