



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

June 2, 1958

Dr. Henry A. Holle  
Commissioner of Health  
State Department of Health  
Austin, Texas

Opinion No. WW-442

Re: The authority of the State Health Department to use funds collected as fees under Section 92 of the Texas Mental Health Code, in spite of the fact that House Bill No. 6 was not submitted to the State Comptroller for certification.

Dear Dr. Holle:

You have requested an opinion concerning whether fees collected pursuant to the provisions of Article 5547, Vernon's Civil Statutes, are available for expenditure.

Section 92 of Article 5547, Vernon's Civil Statutes, provides:

"(a) An application fee and a license fee shall accompany the application for a license. If the Department denies the license, only the license fee shall be returned. The application fee is Twenty-five Dollars (\$25). The annual license fee payable on August 31, of each year is Fifty Dollars (\$50).

"(b) All fees collected under this chapter shall be deposited with the State Treasurer to the credit of the Department."

Section 6 of Article VIII of the Constitution of Texas provides:

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"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assemblage of the sixteenth Legislature."

This constitutional provision controls all appropriations from the State Treasury, and money not specifically appropriated by the Legislature cannot be withdrawn from the Treasury. Pickle v. Finley, 91 Tex. 484, 44 S.W. 480 (1898); Lightfoot v. Laney, 104 Tex. 447, 140 S.W. 89 (1911); Attorney General's Opinions WW-102 (1957) and WW-275 (1957). Thus, the question presented is whether the language "to the credit of the Department" is sufficient language to constitute a specific appropriation pursuant to the provisions of Section 6 of Article VIII of the Constitution of Texas.

An appropriation is a setting apart from the public revenue of a certain sum of money for a specific object in such a manner that the executive officers of the government are authorized to use that money and no more for that object and for no other. Attorney General's Opinion WW-96 (1957) and authorities cited therein. It is noted that the language "to the credit of the Department" does not set apart the fees so deposited for use by the Department, nor does it state the purpose for which the fees, if set apart, could be used.

It is our opinion that such language does not constitute an appropriation within the meaning of Section 6 of Article VIII of the Constitution of Texas. You are, therefore, advised that the fees so deposited in the Treasury pursuant to the provisions of Article 5547 are not available for expenditure.

#### SUMMARY

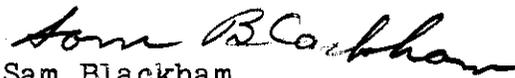
Fees collected pursuant to the provisions of Section 92 of Article 5547, Vernon's Civil Statutes, required to be deposited in the State Treasury have not been

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appropriated by the Legislature,  
and are not, therefore, available  
for expenditure.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
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SB:JR:jl

APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL  
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