



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

April 23, 1959

Honorable William S. Fly, Chairman  
Senate Finance Committee

Honorable W. S. Heatly, Chairman  
House Appropriations Committee  
Austin, Texas

Opinion No. WW-604

Re: Validity of provisions  
in the general appro-  
priations bill, 56th  
Leg., relating to pay-  
ment of rentals and  
services by special  
fund agencies.

Dear Messrs. Heatly and Fly:

You have requested our opinion on the validity of proposed provisions to be incorporated in the general appropriations bill for the next biennium. An example of these provisions is as follows:

"For the payment of office rent and shop rent for examinations; rental amounts for State-owned space are to be computed at the rate of 30¢ per square foot per month, and the Comptroller shall transfer from this appropriation item the appropriate rental sum to the State Building Fund if the occupied space is in buildings constructed from such fund, or to the General Revenue Fund if the occupied space is in buildings otherwise acquired. . . . \$  
\$ "

In Attorney General's Opinion WW-573 (1959), it was held:

"The Legislature cannot by rider in the appropriation bill amend a general law. Attorney General's Opinion V-1304 (1951). Therefore, the Legislature cannot transfer special funds to the General

Revenue Fund by an appropriation bill without first amending the general law creating the special fund. The Legislature does have the power, however, to transfer statutory special funds to the General Revenue Fund by a general law without violating the provision of Section 7 of Article VIII of the Constitution of Texas, relating to the diversion of special funds. Gulf Insurance Company v. James, 143 Tex. 424, 185 S.W.2d 966 (1945); Attorney General's Opinion WW-544 (1959).

"Item 16 to the appropriations to the Attorney General appropriates money for the purposes authorized by the general law and it keeps such special funds in a separate account to be expended only for the purposes authorized by the Legislature by general law. Since the appropriation is neither contrary to any constitutional provision nor to the general law, it is our opinion that such item of the appropriation bill is constitutional."

Since the occupancy of such space is necessary to the carrying out of the particular duties of an agency of the State, the Legislature is authorized to appropriate moneys for the payment of rent. The question presented by you concerns whether this rent can be charged by the Legislature for the occupancy of State-owned space when the Legislature determines that it is to the best interest of the State Building Program to make such charge. There is no question concerning the reasonableness of the rate of 30¢ per square foot for State-owned space and such occupancy is for a governmental purpose.

The rent authorized to be paid by the above quoted provisions of the appropriations bill is to be deposited in the State Building Fund which was created by Section 51-b of Article III of the Constitution of Texas when the space to be occupied is in buildings constructed from such fund and is to be deposited in the General Revenue Fund if the occupied space is in buildings otherwise acquired. This deposit is to be made by requiring the Comptroller to transfer from the appropriation item for rent to the State Building Fund or the General Revenue Fund as above indicated. Therefore the transfer is to be made to the proper fund and the question of transfers of special funds is thereby removed.

You are therefore advised that the above quoted language is valid since it carries out the purpose of the general law creating the special funds and is in conformity with the principles announced in Opinion WW-573.

Your second question concerns the following provisions to be included in the general appropriations act:

"Its committees having determined" that the reasonable cost of the services rendered by administrative and service departments or agencies of the State to the Board of Barber Examiners in carrying out its statutory duties and responsibilities to be the annual sums herein indicated, the Legislature hereby adopts the foregoing fact-finding; and for the purpose of paying for such services there is hereby appropriated and the Comptroller shall transfer from the Barber Examiners Fund (No. 40) to the General Revenue Fund at the end of each fiscal year the sum of. . . . \$ \$ ."

In Attorney General's Opinion WW-573, this office stated:

"In response to the last paragraph of your request relative to suggestions this office might make, you are advised that the Legislature may carry out its intended purpose in one of two alternative methods.

"First, the Legislature can amend the general law creating each special fund so as to authorize a transfer of designated amounts to the general fund, as determined by the Legislature.

"Second, the Legislature may provide in the General Appropriation Bill a method for the reimbursement to the General Revenue Fund by establishing the machinery for a factual determination of the value of the services rendered by administrative and service departments, or the actual cost of the services rendered. This may be accomplished by designating the Legislative

Budget Board or the Governor or some other agency designated by the Legislature, and, after a factual determination, the authority to execute the proper certification of the value of the services rendered. The Comptroller should then be given authority to transfer from the Special Fund to the General Revenue Fund upon such a certificate."

In your request you state that the above quoted provisions to be included in the General Appropriations Act have been drafted in light of Attorney General's Opinion WW-573. The Legislature by this language has provided for the reimbursement to the General Revenue Fund for services rendered by administrative and service departments financed from the General Revenue Fund, and has made this reimbursement based upon a factual determination of the value of the services rendered by such departments prior to the reimbursement being made. Therefore, you are advised that these provisions comply with the principles announced in Attorney General's Opinion WW-573 and are valid.

#### SUMMARY

The Legislature is authorized to make appropriations for the payment of rent of space in State-owned buildings and have such appropriations deposited into the proper fund.

The Legislature may provide in the General Appropriation Bill for the reimbursement to the General Revenue Fund for services rendered by the administrative and service departments financed from the General Revenue Fund, provided that a method is prescribed therein for making a factual determination of the value of the services rendered by administrative and service departments, or the actual cost of the services rendered by the administrative and service depart-

Hon. William S. Fly & Hon. W. S. Heatly, page 5 (WW-604)

ments financed from the General  
Revenue Fund. Attorney General's  
Opinion WW-573.

Yours very truly,

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Attorney General of Texas

By *John Reeves*  
John Reeves  
Assistant

JR:rm

APPROVED:

OPINION COMMITTEE  
Geo. P. Blackburn, Chairman

Riley Eugene Fletcher  
Jack Goodman  
Robert T. Lewis

REVIEWED FOR THE ATTORNEY GENERAL  
BY: W. V. Geppert