



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 12, 1959

Honorable Ned Price, Chairman
Industrial Accident Board
Walton Building
Austin, Texas

Opinion No. WW-623

Re: Does the Industrial Accident Board have the authority to pay necessary court costs in defense of the Second Injury Fund created by Sec. 12c-2, Article 8306, Vernon's Revised Civil Statutes, and may the Comptroller issue warrants for the payment of such costs?

Dear Judge Price:

We have received your letter of April 22, 1959, in which you request our opinion on the following question:

"Does the Industrial Accident Board have the authority to pay necessary court costs in defense of the Second Injury Fund created by Section 12c-2, Article 8306, Vernon's R.C.S., and may the Comptroller issue warrants for payment of such costs?"

Section 12c-2(a), Article 8306, Vernon's Civil Statutes, providing for the Second Injury Fund, reads as follows:

"In every case of the death of an employee under this Act where there is no person entitled to compensation surviving said employee, the association shall pay to the Industrial Accident Board the sum of Three Thousand Dollars, (\$3,000) to be deposited with the Treasurer of the State for the benefit of said

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Fund and the Board shall direct the distribution thereof." (Emphasis added)

Attorney General's Opinion R-1261 to Honorable Geo. H. Sheppard, Comptroller of Public Accounts, dated June 10, 1948, reads in part as follows:

"The 'Second-Injury Fund' is clearly a trust fund and should be deposited in the Trust Section of the State Treasury. It may be disbursed without specific appropriation as it does not come within the constitutional provision (Sec. 6, Art. 8, Const. of Texas) which provides that '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.'"

Since the Second Injury Fund is a trust fund for the use and benefit of those employees entitled to compensation therefrom, we are of the opinion that the members of the Board must fulfill the function of the Trustees of such fund in directing "the distribution thereof" as well as defending the fund itself from unwarranted raids by improper claimants.

The Supreme Court of Texas, on June 28, 1950, in Cause No. A-2642, entered judgment in the case of Miears v. Industrial Accident Board, 149 Tex. 270, 232 S.W. (2d) 671, and ordered that the costs there involved should be paid from this fund:

"It is further ordered that the Petitioner, F. M. Miears, do have and recover of and from the Second Injury Fund administered by the Industrial Accident Board of the State of Texas all costs in this behalf expended in this Court and the Court of Civil Appeals and this decision be certified to the District Court for observance."

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In so doing, the court has established that payment of court costs was a necessary incident to the trustees' protection of the fund, and, therefore, was a proper use of the funds there deposited. The Supreme Court has said that court costs should be paid from this fund. To our mind, the question has been resolved, and the question is now settled law.

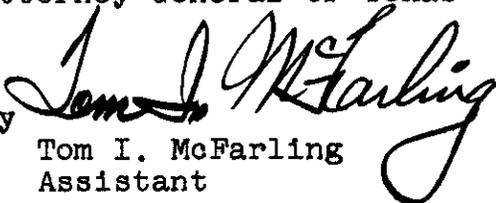
You are advised that it is the duty of the Industrial Accident Board to pay court costs incurred in defense of the Second Injury Fund from such fund, and is the duty of the Comptroller to issue warrants in payment thereof.

SUMMARY

It is the duty of the Industrial Accident Board to pay court costs incurred in defense of the Second Injury Fund from such fund, and it is the duty of the Comptroller to issue warrants in payment thereof.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Tom I. McFarling
Assistant

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APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert