



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 16, 1959

Honorable Sam O. Kimberlin, Jr.
Deputy Commissioner
Department of Banking
Austin 14, Texas

Opinion No. WW-725

Re: Authority of the Finance
Commission to invest funds
in United States Government
obligations.

Dear Mr. Kimberlin:

Your request for an opinion from this office reads
as follows:

"As you know all expenses of the Banking Department of Texas are paid out of fees, penalties, and revenues collected by the Department under the Banking Department Self Support and Administration Act (Acts 1951, 52nd Legislature, page 233, Chapter 139). From time to time funds are accumulated and held for some period of time before they are needed to pay the expenses of the operation of the Department. Please advise us whether or not, in your opinion, the Finance Commission of Texas could authorize the investment of such funds in U. S. Government Bonds or other obligations during such periods when such funds are idle and not needed for the operation of the Department."

The powers of the Finance Commission with reference to the disposition and control of public monies involved in your request are governed by the provisions of Article 342-112, Vernon's Civil Statutes, which provide as follows:

"The Commissioner shall, from time to time as directed by the Finance Commission, submit to such Commission a full and complete report of the receipts and expenditures of the Banking Department and the Finance Commission may from

time to time examine the financial records of the Banking Department or cause them to be examined. In addition, the Banking Department shall be audited from time to time, by the State Auditor in the same manner as other State Departments, and the actual costs of such audits shall be paid to the State Auditor from the funds of the Banking Department. Fees, penalties and revenues collected by the Banking Department from every source whatsoever shall be retained and held by said Department, and no part of such fees, penalties and revenues shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Banking Department shall be paid only from such fees, penalties and revenues, and no such expense shall ever be a charge against the funds of this State. The Finance Commission shall adopt, and from time to time amend, budgets which shall direct the purposes, and prescribe the amounts, for which the fees, penalties and revenues of the Banking Department shall be expended; and the Finance Commission shall, as of December 31, 1951, and annually thereafter, report to the Governor of the State of Texas the receipts and disbursements of the Banking Department for each calendar year; and shall within the first sixty (60) days of each succeeding Regular Session of the Legislature make a report to the appropriate committees of the House and Senate charged with considering legislation pertaining to banking."

It is noted that such funds are required to be retained and held by the Banking Department. The Banking Department is further authorized to expend such funds for the payment of expenses of the Department. The Legislature has not specifically authorized the Finance Commission to invest such funds. Whenever the Legislature has authorized a State agency to invest public monies, it is stated the securities into which such monies may be invested; e.g., Section 9 of Article 678m, Vernon's Civil Statutes, authorizing the State Building Commission to invest monies in certain United States Government obligations.

In the absence of such statutory authorization, it is our opinion that the Finance Commission does not have authority to invest public monies under its control. Such investment would not constitute payment of any expense of the Banking Department and would not constitute "retention" by the Department of the public funds since such an investment would require an expenditure of the funds.

Honorable Sam O. Kimberlin, Jr., page 3 (WW-725)

SUMMARY

The Finance Commission of Texas does not have authority to invest public monies under its control in United States Government obligations.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:mfh

APPROVED:

OPINION COMMITTEE
Gordan Cass, Chairman

Howard Mays

Wallace Finfrock

Morgan Nesbitt

REVIEWED FOR THE ATTORNEY GENERAL
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