



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 27, 1960

Mr. Ramie H. Griffin
Criminal District Attorney
Beaumont, Texas

Opinion No. WW-866

Re: Payment of auditing or
accounting fees under a
tax remission act.

Dear Mr. Griffin:

You have requested an opinion from this Department
on the following question:

"May the corpus of the fund set up
under Acts 1929, 41st Legislature, page
656, chapter 292, as amended by Acts 1941,
47th Legislature, page 1308, chapter 584
and Acts 1945, 49th Legislature, page 615,
chapter 353 for the benefit of the City of
Port Arthur be reached to pay expenses of
an audit required to be made annually by
said Act and for which no funds have been
allocated?"

Section 1 of the above mentioned Act, (which is
codified in the historical note found under Article
6830, Vernon's Civil Statutes) provides in part:

"Commencing with the fiscal year begin-
ning September 1, 1929, and ending August 31,
1961, there be and hereby are donated and
granted by the State of Texas to the City of
Port Arthur, Texas, situated in Jefferson
County, Texas, eight-ninths (8/9) of the net
amounts of the state ad valorem taxes collect-
ed on all property, both real and personal,
in Commissioner's Precinct No. 2 of Jefferson
County, Texas, as it existed on January 1, 1945,
which shall be ascertained and apportioned as
now provided by law; . . ."

Section 2 provides that the Collector of Taxes of
the County shall make a monthly report to the Comptroller

showing each and every item of State ad valorem taxes collected by him upon the property in Precinct No. 2. He shall present such report together with the tax receipt stubs to the County Clerk, who shall within ten (10) days compare the report with the stubs, and if the same agrees as regards names, dates and accounts, the Clerk shall certify to its correctness for which he shall be paid by the Commissioners Court, Twenty-five (25¢) cents for each certificate and Twenty-five (25¢) cents for each two hundred (200) taxpayers named in said report.

Section 4 provides in part:

"The municipal authorities of the City of Port Arthur, Texas, shall, on the 1st day of January of each year, cause to be made an itemized statement, under oath and in triplicate, showing the amount of money received by the City of Port Arthur, Texas, under this Act, and how, to whom, and for what purpose the same has been expended. One copy of such statement after having been audited shall be forwarded to and filed by the County Clerk of Jefferson County, Texas, as hereinafter provided, and the other to the Comptroller of Public Accounts. The said statement shall be sworn to by the treasurer of said City, and the correctness thereof shall be certified by an auditor appointed by the Commissioners Court of Jefferson County, Texas, who shall, while auditing said statement, have before him all vouchers upon which expenditures have been made from said fund. . . ." (Emphasis added).

Section 5 provides in part:

"The moneys herein and hereby granted and donated to the City of Port Arthur, Texas, are declared to be trust funds for the purpose of aiding said City in paying the interest upon and principal of and providing a sinking fund for an issue or issues of bonds heretofore or hereafter issued, the proceeds of which bonds have been or are to be used exclusively in constructing and maintaining seawalls, breakwaters,

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shore protections and primary drainage systems in order that said city be protected from calamitous overflows and storm waters; . . . The use and diversion of such moneys for any other purpose whatsoever is hereby prohibited; . . ." (Emphasis added).

The Legislature declared that the moneys donated by this Tax Remittance Act shall be a trust to be used for a threefold purpose only; i.e., to provide a sinking fund for, pay interest upon and the principal of certain bonds issued or to be issued. It expressly states that the use of such moneys or corpus for any other purpose whatsoever is prohibited. The payment from these funds for the expense of an audit could certainly not be classified under one of the above named categories. Therefore, your question is answered in the negative.

The State, while donating these funds to the City of Port Arthur, provides various "check-points" to ascertain whether or not the trust is being properly administered. It is the duty of certain county officials to see that this "checking" is accomplished. Section 4 of the above Act requires the Commissioners Court to appoint an auditor to audit an annual statement made by the municipal authorities of the City. The Act is silent as to just who should bear the expense of the audit, thus your opinion request. Section 2, however, expressly states that the Commissioners Court shall pay the County Clerk for checking monthly reports made by the Collector of Taxes in regard to this fund.

In view of this and the fact that it is the delegated duty of the Commissioners Court to appoint or employ the auditor, we are of the opinion it was the intent of the Legislature that the expense of such an audit should be paid by the Commissioners Court of Jefferson County.

SUMMARY

The corpus of the fund set up under Acts 1929, 41st Leg., p. 656, ch. 292, as

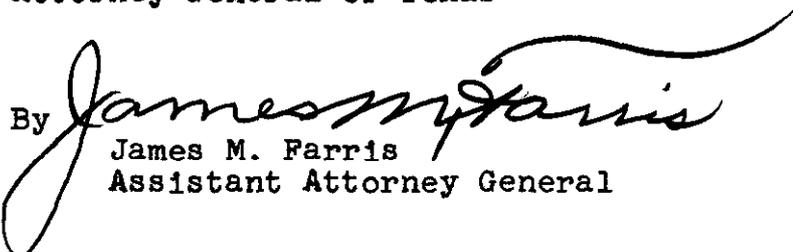
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amended by Acts 1941, 47th Leg., p. 1308, ch. 584 and Acts 1945, 49th Leg., p. 615, ch. 353 for the benefit of the City of Port Arthur may not be used to pay the expense of an annual audit required by said Act. It is an expense that should be paid by the Commissioners Court of Jefferson County.

Very truly yours,

WILL WILSON
Attorney General of Texas

By


James M. Farris
Assistant Attorney General

JMF:hb

APPROVED:

OPINION COMMITTEE
J. C. Davis, Chairman

Byron Fullerton
Charles D. Cabaniss
C. Dean Davis
Robert A. Rowland

REVIEWED FOR THE ATTORNEY GENERAL
BY Leonard Passmore