



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 17, 1961

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-1117

Re: Constitutionality of Section
4 of Article 6243e, Vernon's
Civil Statutes.

Dear Mr. Calvert:

You have requested an opinion on the following ques-
tions:

- "1. Is the provisions of Section 4 of the Firemen's Pension Commission Act Section 4 of Article 6243e, V.C.S. still valid. Should you answer question No. 1 in the affirmative then answer No. 2.
- "2. Is the Comptroller required to set out in a separate appropriation \$50,000.00 of the \$300,000.00 appropriated for each year of the biennium."

Section 4 of Article 6243e provides as follows:

"The State Treasurer shall, not later than the first day of May of each year after this Act takes effect, apportion and pay over to the various Boards of Trustees, upon a pro rata ratio basis of the insurance written upon property within the corporate limits of such city or town, all moneys coming into his hands annually from the gross premium receipts tax herein provided; save and except, the sum of Fifty Thousand Dollars (\$50,000) less expenses of administration as herein provided, the balance of which shall be kept and retained by the State Treasurer in the said Firemen's Relief and Retirement Fund

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as an emergency reserve fund for the purpose herein provided."

The gross premium receipts tax referred to in Section 4 was held unconstitutional in American Alliance Ins. Co. v. Board of Insurance Commissioners, 126 S.W.2d 741 (Civ.App. 1939, error ref.). Since the "gross premium receipts tax" from which payment by the Treasurer was to be made to the various Boards of Trustees was held unconstitutional, such provisions can have no force and effect and, therefore, the provisions of Section 4 of Article 6243e, Vernon's Civil Statutes, are void and unenforceable. American Alliance Ins. Co. v. Board of Insurance Commissioners, supra. In other words, the provisions of Section 4 are incapable of being severed from the provisions of Section 2, which were held unconstitutional in American Alliance Ins. Co. v. Board of Insurance Commissioners, supra.

SUMMARY

Section 4 of Article 6243e, Vernon's Civil Statutes, providing for an apportionment from the gross premium receipts tax (held invalid in 1939) is void and unenforceable, since its provisions are incapable of being severed from the invalid portions of the Act.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:ms

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

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Morgan Nesbitt
Bob Eric Shannon
Thomas Burrus

REVIEWED FOR THE ATTORNEY GENERAL
By: Houghton Brownlee, Jr.