



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 5, 1988

Honorable Bob Bullock
Comptroller of Public Accounts
L.B.J. State Office Building
Austin, Texas

LO-88-93

Dear Mr. Bullock:

You ask about the mechanism for funding the Advisory Commission on State Emergency Communications (the advisory commission), which was created pursuant to article 1432f, V.T.C.S.

The advisory commission was created in 1985. Acts 1985, 69th Leg., ch. 909, at 3044. Under the 1985 act the function of the advisory commission was to "investigate the provision of emergency services in this state to develop recommendations relating to the establishment of a 9-1-1 service" *Id.*, § 3, at 3045. The advisory commission was slated for dissolution on May 31, 1987. In 1987 the legislature reenacted the 1985 legislation and expanded the powers of the advisory commission. Acts 1987, 70th Leg., ch. 236, at 1541. Section 3 of article 1432f now provides:

The advisory commission shall:

(1) administer the implementation of statewide 9-1-1 service;

(2) develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in establishing regional plans under Section 5 of this Act, including requirements that the plans provide for:

(A) automatic number identification by which the telephone number of a caller is automatically identified at the public safety answering point receiving the call; and

(B) other features the advisory commission considers appropriate;

(3) examine and approve or disapprove regional plans under Section 5 of this Act;

(4) recommend minimum training standards and provide assistance in the establishment and operation of 9-1-1 service; and

(5) allocate money to prepare and operate regional plans as provided by Section 5 of this Act.

Section 6(b) of article 1432f provides for the collection of an "equalization surcharge":

(b) In addition to the fee imposed under Subsection (a) of this section, the advisory commission may impose a 9-1-1 equalization surcharge on each customer receiving intrastate long-distance service, including customers in an area served by an emergency communication district, whether or not the district is participating in the regional plan. The fee must be in an amount not exceeding one-half percent of charges for intrastate long-distance service, as defined by the advisory commission. Except as provided by Subsection (d) of this section, an intrastate long-distance service provider shall collect the surcharges imposed on its customers under this section, and shall deliver the surcharges to the advisory commission not later than the 60th day after the last day of the month in which the surcharges were collected. Periodically, the advisory commission shall allocate the surcharges to each regional planning commission or other public agency designated by the regional planning commission for use in carrying out the regional plans provided for by this Act. The allocations to each regional planning commission need not be equal, but should be made to carry out the policy of this Act to implement 9-1-1 service statewide. Money collected under this subsection may be allocated to an emergency communication district, whether or not the district is participating in the regional plan. The advisory commission shall manage the surcharges outside the state treasury until they are allocated to regional planning commissions. The advisory commission may retain from surcharges collected under this

section the amount necessary for the advisory commission to carry out its duties under this Act. (Emphasis added.)

The last two sentences of section 6(b) give rise to your question. You ask whether the money retained by the commission for administrative purposes is to be deposited in the state treasury.

The State Funds Reform Act provides that money received by a state agency is to be deposited in the state treasury:

Fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds collected or received by a state agency under law shall be deposited in the treasury, credited to a special fund or funds, and subject to appropriation only for the purposes for which they are otherwise authorized to be expended or disbursed. A deposit shall be made at the earliest possible time that the treasury can accept those funds, but not later than the seventh day after the date of receipt.

Gov't Code §404.094. See also § 404.093 (exceptions to requirement of section 404.094). This office has held that the provisions of the State Funds Reform Act prevail over conflicting provisions of previously enacted specific provisions. Attorney General Opinion JM-479 (1986). The legislature that enacted the State Funds Reform Act cannot, however, bind a subsequent legislature. Watts v. Mann, 187 S.W.2d 917, 924 (Tex. Civ. App. - Austin 1945, no writ). Because section 6(b) of article 1432f was enacted after the State Funds Reform Act, we must examine the specific language of article 1432f, section 6(b), to determine how the funds collected by the advisory commission are to be managed. See Gov't Code § 311.026(b) (providing that a specific provision controls over a general provision unless the general provision is later in time, and the manifest intent is that the general provision prevail).

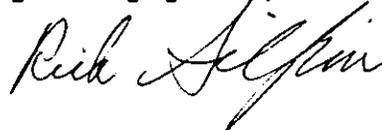
Again, the relevant sentences in section 6(b) provide:

The advisory commission shall manage the surcharges outside the state treasury until they are allocated to regional planning commissions. The advisory commission may retain from surcharges collected under this section the amount necessary for the advisory commission to carry out its duties under this Act.

The correspondence you submitted with your request indicates that all the parties who have studied your question agree that the money that is allocated to the regional planning commissions is not to be deposited in the state treasury. It has been suggested, however, that the money retained by the advisory commission for administrative purposes must be deposited in the treasury. Apparently that interpretation is based on the argument that since the advisory commission is to manage surcharges outside of the treasury "until they are allocated to regional planning commissions," it has no authority to manage surcharges outside the treasury if they are never going to be allocated to regional planning commissions.

We do not think, however, that the phrase "until they are allocated to regional planning commissions" limits the statement that the surcharges are to be managed outside the treasury. Rather, we read it as limiting the period during which the advisory commission manages the surcharges. In other words, once the advisory commission allocates funds to a regional planning commission, the regional planning commission manages the funds. We think that is the more commonsensical reading of the language of section 6(b). Also, we think the legislature would have been explicit if it had intended to make a fine distinction between funds managed outside the treasury by the advisory commission and funds that had to be deposited in the treasury. Therefore, we conclude that the statement that the surcharges are to be managed outside the treasury applies to all funds delivered to the advisory commission pursuant to section 6(b), regardless of whether the surcharges are ultimately allocated to regional planning commissions or whether they are used by the advisory commission itself for administrative purposes.

Very truly yours,



Rick Gilpin
Chairman
Opinion Committee

Prepared by Sarah Woelk

RG/SW/bc

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