



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

January 24, 1939

GERALD C. MANN
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

in Part
Overruled by O-192-A

Dear Mr. Sheppard:

Opinion No. O-192
Re: H. B. No. 363, Ch. 341,
Acts Regular Session
44th Legislature of Texas

Your letter of December 22, 1938, addressed to Attorney General McCraw, is before us for answer.

In seeking our statutory interpretation of the above Act, you submit the following letter:

"By House Bill No. 363, Chapter 341, Acts of the Regular Session of the Forty-fourth Legislature, there was transferred from the General Revenue Fund \$4,968.15 to replace the moneys placed in the State Treasury by Senate Bill No. 74, Chapter 27, Acts of the Second Called Session of the Thirty-eighth Legislature, abolishing all Special Funds. The \$4,968.15 was originally placed in the hands of the proper officials of the State of Texas to reimburse the amount paid by the State for enlisted men and officers serving in the Voluntary Army of the War with Spain. You will notice upon reading House Bill No. 363, Acts of the Regular Session of the Forty-fourth Legislature, that a commission was appointed for the investment of this \$4,968.15.

"Since there has not been anything done in the way of compliance with the provisions of House Bill No. 363, above mentioned, and since the veterans of the Spanish American War have now applied to this department for use of this money, this department respectfully requests your opinion as to whether or not the Comptroller is now authorized to transfer from the General Revenue Fund the \$4,968.15 to be invested by the commission provided for in said House Bill No. 363.

"If you hold that this money is now subject to transfer from the General Revenue Fund, then will an appropriation by the Legislature be necessary to authorize the commission to expend the interest derived from the investment of this fund?"

At the outset, we wish to point out that the sum of \$4,968.15 in question was not derived from any form of taxation or source of revenue. It represents, on the contrary, the balance of an original fund of \$48,000 appropriated by the Congress of the United States under Chapter 647, 55th Congress, 2nd Session, July 8, 1898, for the purpose of reimbursing the Governors of States and Territories for expenses incurred by them in aiding the United States to raise and organize, and supply and equip the Volunteer Army of the United States in the then existing war with Spain. By Chapter 445, 55th Congress, March 3, 1899, Amendment of the above cited Act, detailed procedure was outlined for the disbursement of this fund to officers and enlisted men, which Act, among other things, contains this significant proviso:

"Provided further, that where States and Territories have not paid amounts to the officers and men or any part thereof the pay allowed them by this Act, the same shall be paid by the States and Territories direct to the officers and men, and no money allowed by this Act for officers and men shall be covered into the treasury of the State or Territory."

In the face of this unequivocal provision and despite the fact that such fund or the balance thereof belonged to officers and enlisted men of "The Volunteer Army of the United States in the War with Spain", the same was by Senate Bill 74, Chapter 27, Acts 2nd Called Session, 38th Legislature, covered into the General Revenue Fund, or in other words, into the State Treasury. No special mention is made of such fund in that Act. This Act was a general act abolishing all special funds in the State Treasury set aside therein for special and particular purposes and transferring and placing moneys in such fund into the General Revenue Fund, with certain exceptions. The official correspondence attached to your letter reveals that this sum of \$4,968.15 under inquiry was carried on the records of the Treasury Department and Comptroller's Department as "The Voluntary War with Spain Fund".

Regardless of whether this fund was in the State Treasury before the passage of the Act abolishing special funds, it was undoubtedly placed therein by such Act so as to require, under

Article 8, Section 6, Constitution of Texas, an appropriation or transfer of same by Act of the Legislature. For this purpose and in recognition of the fact that it was wrongfully covered into the State Treasury, the Legislature, under House Bill No. 363, Chapter 341, Acts Regular Session, 44th Legislature, transferred such moneys in the specific sum of \$4,968.15 from the General Revenue Fund and placed same in the hands of a specially created Commission of the Voluntary Army of the War with Spain, composed of the Governor of Texas, the Adjutant General of Texas and the Department Commander of the United Spanish War Veterans of Texas, and their successors in office, to be invested for the use and benefit of aged and indigent Spanish-American War Veterans, their widows and orphans.

From this brief congressional and legislative history of this muchly transferred fund, the question emerges as to whether House Bill No. 363, Ch. 341, Acts Regular Session, 44th Legislature, could legally operate to accomplish the worthy purposes sought thereby. We reluctantly but advisedly are impelled to the conclusion that the sum of \$4,968.15, which was the subject matter of the above cited act, was not funds or moneys of the State of Texas for disposition thereunder, but rather moneys and funds in and to which the United States of America had, and now has, reversionary right, claim or interest. This conclusion not only follows from the Acts of Congress hereinabove cited and adverted to, but from the express language of a letter opinion written by the Comptroller General of the United States, under date June 22, 1931, to the Commander, Department of Texas, United Spanish War Veterans, which we quote:

"It may be stated that is a situation should arise, after the funds have been withdrawn from the State Treasury and placed at the disposal of the Governor of the State of Texas for payment in accordance with Federal statutes, where they can not be used for the purpose for which originally turned over to the Governor of the State, the United States has a reversionary interest in the unexpended fund, and the balance remaining appears proper for returning to the United States with a statement showing by totals for items the grand total expended. The balance returned would be for covering into the Treasury of the United States as a special fund under an appropriate title, such as "Pay of Volunteers, Spanish War, State Service - Texas." Any claims thereafter presented would be for developing by the State authorities, and, if approved by the Governor, forwarded to this office for the statement of a settlement payable under the special fund."

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The Acts of Congress creating this fund, of which the sum of \$4,968.15 is the balance, did not provide that such fund might be invested in bonds of the University of Texas or any other securities so that the interest therefrom might be paid to indigent widows and orphans of Spanish-American War Veterans. The nature of the investment provided by the Act of the Texas Legislature and the creation of a Commission to make such investment, reasonably assures, for all practical purposes, the safety of the corpus. But, in legal contemplation, the right to invest these funds is tantamount to the right to dispose of them, and this the Legislature of Texas could not do without an enabling act of Congress, indicating the complete relinquishment and waiver by the United States of any claim or reversionary interest in this fund.

We are not unaware of the laudable purposes sought to be accomplished by the Act in question, and both the Legislature of Texas and the Commander, Department of Texas United Spanish War Veterans should be commended for their efforts to this end, but these considerations do not alter the plain provisions of the Acts of Congress which created this fund and which must govern its ultimate disposal.

We are accordingly, under law, required to advise you that House Bill No. 363, Ch. 341, Acts Regular Session, 44th Legislature, of Texas, is ineffective to transfer from the General Revenue Fund to the Commission created by said Act, for investment purposes, said sum of \$4,968.15.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Assistant

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APPROVED:

ATTORNEY GENERAL OF TEXAS