



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

April 8, 1958

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

Opinion No. WW-409

Re: Should the amount of earnest money forfeited on the sale of property by the Board of Control for the Highway Department be deposited and credited to the General Revenue Fund, or should it be deposited to the State Highway Fund?

Dear Mr. Calvert:

You have requested an opinion of this office as to whether the amount of earnest money forfeited on the sale of property by the Board of Control for the Highway Department should be deposited to the General Revenue Fund or to the State Highway Fund.

The property sold, and upon which sale the earnest money was deposited, is a house acquired by the State Highway Department in the purchase of a highway right-of-way. The purchase of the right-of-way was made from the State Highway Fund.

The Board of Control is given certain authority of sale and disposal of State personal property by the Salvage and Surplus Act of 1957, which appears as Article 666 of Vernon's Annotated Texas Civil Statutes. Section 4 (e) of Article 666 reads as follows:

"The proceeds from the sale of any surplus property less the cost of advertising the sale shall be deposited to the credit of the item of appropriation to the agency for whom the sale was made. A portion of the proceeds from the sale of any surplus property equal to the cost of advertising the sale shall be deposited in the State Treasury to the credit of the item of appropriation to the State Board of Control from which such cost was expended." (Empahsis ours)

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In our opinion the controlling term of Section 4 (e) is "proceeds from the sale". That is to say, if the earnest money, when forfeited, can be deemed "proceeds from the sale" of the property, it must be credited to the Highway Fund. Of course the Board of Control would be entitled to a credit equal to the cost of advertising the sale.

The property was sold to the high bidder upon the opening of sealed bids. The conditions of sale called for a bid deposit in the amount of fifteen per cent (15%) of the bid price. This 15% bid deposit was to be forfeited in the event the high bidder failed to take the property. If it were not for the sale and the terms and conditions concerning the earnest money, the money in question would not have accrued to the benefit of the State.

Therefore, it is our opinion that the 15% bid deposit, upon forfeiture, comes within the term "proceeds from the sale" of property as that term is used in Section 4 (e) of Article 666. It is further our opinion, in answer to your question, that the earnest money forfeited on the sale of property by the Board of Control for the Highway Department should be credited to the State Highway Fund after deducting the cost of advertising the sale and crediting such sum to the Board of Control.

SUMMARY

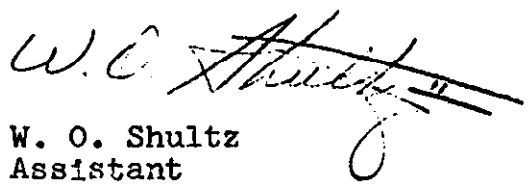
The earnest money forfeited on the sale of property by the Board of Control for the Highway Department comes within the term "proceeds from the sale" as used in Section 4 (e) of Article 666 of Vernon's Annotated Texas Civil Statutes, therefore, this sum should be

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credited to the State Highway Fund after crediting the cost of advertising the sale to the Board of Control.

Very truly yours,

WILL WILSON
Attorney General of Texas

By 
W. O. Shultz
Assistant

WOS:pf:mg

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

Ralph R. Rash
Riley Eugene Fletcher

REVIEWED FOR THE ATTORNEY GENERAL

By:
W. V. Geppert