



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 21, 1959

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

Opinion No. WW-764

Re: Is the State Comptroller authorized to make the transfers from the various funds specified in Item 14 of the State Building Commission's appropriation, House Bill 4, Acts 56th Legislature, Third Called Session, to the Building Commission's fund upon proper request of the agency administering the funds from which transfers are appropriated.

Dear Mr. Calvert:

You have requested an opinion concerning whether the Comptroller is authorized to make the transfers specified in the appropriation to the State Building Commission in House Bill 4, Acts of the 56th Legislature, Third Called Session, 1959, Chapter 23, page 442, the General Appropriation Bill. The appropriations to the State Building Commission for the construction of a second State Office Building to be occupied in part by the agencies listed in the appropriation and referred to in your request, read as follows:

"Out of Other State Funds:

14. For the purchase of balance of land in Block 173, City of Austin, and for the construction of a second State Office Building thereon, there is hereby appropriated from the funds specified the amounts shown:

a. Special Game and Fish Fund	\$ 600,000	400,000 and U.B.
b. Professional Engineers License Fund	225,000	U.B.
c. Public Welfare Administrative Fund		
c. Federal	587,674	512,326 and U.B.
d. Commodity Distribution Fund No. 39	40,000	U.B.
e. Social Security Administration Fund No. 929	60,000	U.B.
Subtotal, direct appropriations from Other State Funds		
	<u>\$1,512,674</u>	<u>\$912,326</u> and U.B.

15. The following agencies are hereby authorized to transfer the sums specified to the State Building Commission as contributions toward construction of the second State Office Building listed as Item 14 above, after contracts are entered into between the State Building Commission and such agencies for space to be occupied without rental payments but providing for the payment of their proportionate shares of janitorial, utilities, and maintenance expenses:

a. State Finance Commission	250,000	U.B.
b. State Board of Plumbing Examiners	250,000	U.B.

". . .

"Any payments or receipts to the State Building Commission from the provisions of Item 15 above are hereby appropriated to said Commission for the purposes for which they are received."

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The State Building Commission is the agency of the State charged with the duty of carrying out the State Building Program established by the provisions of Section 51-b of Article III of the Constitution of Texas and Article 678a of Vernon's Civil Statutes.

In Attorney General's Opinion WW-573 (1959), it was held:

"The Legislature cannot by rider in the appropriation bill amend a general law. Attorney General's Opinion V-1304 (1951). Therefore, the Legislature cannot transfer special funds to the General Revenue Fund by an appropriation bill without first amending the general law creating the special fund. The Legislature does have the power, however, to transfer statutory special funds to the General Revenue Fund by a general law without violating the provision of Section 7 of Article VIII of the Constitution of Texas, relating to the diversion of special funds. Gulf Insurance Company v. James, 143 Tex. 424, 185 S.W.2d 966 (1945); Attorney General's Opinion WW-544 (1959).

"Item 16 to the appropriations to the Attorney General appropriates money for the purposes authorized by the general law and it keeps such special funds in a separate account to be expended only for the purposes authorized by the Legislature by general law. Since the appropriation is neither contrary to any constitutional provision nor to the general law, it is our opinion that such item of the appropriation bill is constitutional."

In Attorney General's Opinion WW-604 (1959), this office held that the occupancy of office space is necessary to the carrying out of the particular duties of an agency of the State and, therefore, the Legislature is authorized to appropriate moneys for the payment of rent. By like reasoning, the Legislature is authorized to appropriate

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moneys for the construction of office space. Since the State Building Commission is the agency charged with the duty of the developing of the State Building Program, it was proper for the Legislature to appropriate the special funds referred to in your request to the State Building Commission directly or to authorize the Comptroller to transfer special funds for the purpose of constructing the State Office Building. Attorney General's Opinions WW-544 (1959); WW-573 (1959); and WW-604 (1959) and the authorities cited therein.

You are, therefore, advised that you are authorized to make the transfers specified in the appropriation to the State Building Commission.

SUMMARY

The Legislature is authorized to appropriate special funds to the State Building Commission for the construction of a State Office Building and such appropriation does not constitute a diversion of the purpose for which the special funds were created. Therefore, the Comptroller is authorized to make the transfers specified in the appropriation to the State Building Commission for the purpose of providing funds for the construction of a State Office Building. Attorney General's Opinions WW-544 (1959); WW-573 (1959); WW-604 (1959).

Yours very truly,

WILL WILSON
Attorney General of Texas

By *John Reeves*
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Assistant

JR:mfh

APPROVED:
OPINION COMMITTEE
W. V. Geppert, Chairman
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Gordon Cass

REVIEWED FOR THE ATTORNEY GENERAL
BY: Leonard Passmore