



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

August 3, 1973

Honorable Jackie W. St. Clair
Commissioner
Bureau of Labor Statistics
State of Texas
Austin, Texas

Letter Advisory No. 57

Re: Where state employee
is overpaid, may Comptroller withhold further
payments of salary
until sum is repaid?

Dear Commissioner St. Clair:

Your letter requesting our opinion states that the subject employee received a promotion on the 1st day of February, 1973, and, in accordance with that promotion, the Comptroller paid warrants at the higher rate until this past month when he informed you that the promotion was in violation of restrictive measures of the classification provisions of the appropriation bill; that the employee had been overpaid some \$560 which was then due to the Treasury of the State; and directed, "Please do not request the issuance of a warrant to [the employee] until the overpayment has been paid. . . ."

The Comptroller relies on Article 4350 of Vernon's Texas Civil Statutes as his authority to refuse to issue the warrant.

Article 4350 is a statute of general application which provides simply: "No warrant shall be issued to any person indebted to the State, or to his agent or assignee, until such debt is paid." It assumes, by its language, the existence and the establishment of a debt.

The Provision Classification Act of 1961 [Article 6252-11, Vernon's Texas Civil Statutes] is the law under which the validity of this employee's promotion is to be established and ultimately the law which will determine whether or not he is indebted to the State. It provides in its §6 for the establishment in the office of the State Auditor of the position of Classification Officer who, among his other duties, is to assist in personnel audits to "assure conformity" with the position classification plan.

"When exceptions to or violations of the Position Classification Plan or of prescribed salary ranges are revealed by personnel audits, the Classification Officer shall notify the agency head in writing and specify the points of non-conformity or violation. The executive head of such agency shall then have reasonable opportunity to resolve the exception or end the violation by reassigning the employee to another position title or class consistent with the work actually performed, by changing the employee's title or salary rate to conform to the prescribed Classification Plan and salary range, or by obtaining a new class description of work and salary range to correct the exception or violation.

"If no action is taken by the executive head of such agency to correct or end the exception or violation within twenty (20) calendar days following the date of the written notification made by the Classification Officer, such Officer shall make a written report of the facts to the Governor and the Legislative Budget Board. The Governor may then determine, after obtaining the advice of the Legislative Audit Committee, the action to be taken in correcting the exception or violation and may, within his discretion, direct the Comptroller not to issue payroll warrants for the employee or for the position affected by the exception or violation until such discrepancy has been corrected."

The Act further provides for an appellate procedure.

Thus, the very statute creating the Position Classification Plan, in our opinion, creates at the same time a method for policing its application and for determining whether or not there has been an instance of nonconformity. The statute provides for the course to be followed if there is an indication of such nonconformity. It does not provide for a unilateral determination by the Comptroller. In fact the Comptroller plays no part in the process at all.

In May of 1962, in Attorney General Opinion No. WW-1328, also involving a question concerning an appropriate salary under the Position Classification Act, and a consequent refusal by the Comptroller to issue a warrant unless authorized to do so by an Attorney General Opinion, this office concluded that the function of the State Comptroller was ministerial only and that it was his mandatory duty to issue his warrant provided a proper voucher in due form was timely presented. The opinion stated:

"We reserve no doubt that had the Legislature intended for the Comptroller or his employees to determine whether or not a particular employment was an exception or in violation of the Position Classification Act, it would have done so in the same clear language that it bestowed that function upon the Classification Officer, the Legislative Audit Committee and the Governor. We think that it equally is clear that the Comptroller, not having such authority directly, cannot exercise the authority indirectly by refusing to issue the payroll warrant in question."

That opinion relied upon the Supreme Court decision of Fullmore v. Lane, 140 S. W. 405 (Tex. 1911) where the courts recognized that the Comptroller had discretion in issuing a warrant to the extent necessary to determine that the claim was in pursuance of some specific appropriation but that he was not clothed with the discretion to withhold the issuance of a warrant arbitrarily. It said:

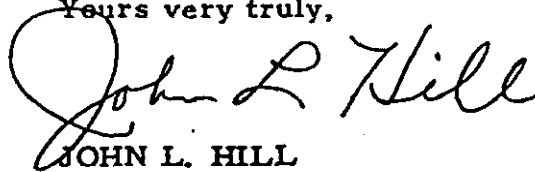
". . . If no such appropriation has been made as a basis for the claim, the Comptroller is not required to issue the warrant; but on the other hand, if such appropriation has been made, and the requisition for the warrant is made in pursuance thereof, his duty to issue the warrant is mandatory, and he cannot lawfully withhold the issuance of the warrant."

Your question to us was whether the Comptroller lawfully could withhold the issuance of the warrant to which the employee of your depart-

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ment was entitled as of August 1, 1973. Our answer to your question is that, in the absence of the prior establishment of a debt by agreement with the employee, or by the State's proper allegation of a debt's existence in accordance with the provisions of Article 6252-11, Vernon's Texas Civil Statutes, or by some other lawfully effective means, the Comptroller cannot properly withhold the issuance of the warrant.

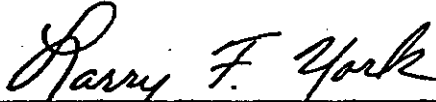
Yours very truly,



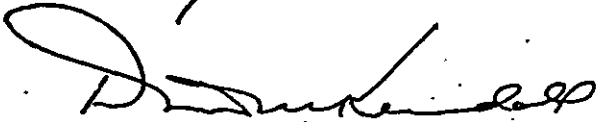
JOHN L. HILL

Attorney General of Texas

APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
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