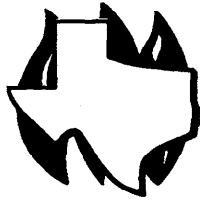


Texas
Commission



on
Fire Protection

P.O. Box 2286 Austin, TX 78768-2286 (512) 239-4911 (512) 239-4917 info@tcfp.state.tx.us

January 19, 2001

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OPINION C

FILE # ML-41857-00

I.D. # 41857

RQ-0340-JC

The Honorable John Cornyn
Attorney General
State of Texas
P. O. Box 12548
Austin, TX 78711-2548

Attn: Opinion Committee

RE: Opinion Request concerning Rider 2 in HB1, 76th Regular Session, Article V, page V-27, for the Texas Commission on Fire Protection.

Dear General Cornyn:

On behalf of the Texas Commission on Fire Protection (the "Commission"), I would like to request an opinion concerning the scope of the unexpended balance authority provided in Rider 2 of the above-reference Appropriations Bill for the Commission. Rider 2, as set out in HB 1 is stated in its entirety as follows:

Appropriation of Receipts - Loan Repayments Revolving Fund. In addition to the amounts appropriated above, the Commission on Fire Protection is hereby appropriated all loan repayments, loan forfeitures and other revenue accruing to the revolving loan fund in excess of \$226,336 for fiscal year 2000 and in excess of \$226,336 for fiscal year 2001 for the purpose of making additional loans as established in V.T.C.A., Government Code, Chapter 419, Subchapter C. The unexpended balance in the revolving loan fund at the end of fiscal year 2000 is hereby re-appropriated for fiscal year 2001.

The Commission contends that the "unexpended balance" in the revolving loan fund at the end of fiscal year 2000 (which gets re-appropriated for fiscal year 2001) comprises all of the monies remaining in the revolving loan fund at the end of fiscal year 2000. The unexpended balance would include any unspent funds from the initial appropriated amount of \$226,336 and also any monies that are in the fund in excess of the \$226,336 at the end of fiscal year 2000. At the end of fiscal year 2000, the revolving loan fund had a balance of \$61,598, of which \$27,035 was in excess of the \$226,336 threshold.

*Kelley Stalder, Parker, Presiding Officer ★ Juan J. Adame, Corpus Christi, Assistant Presiding Officer
Al Lopez, Jr., Kingsville, Secretary ★ David Abernathy, Pittsburg ★ Pat Barrett, TEEX ★ Marvin Dawson, Brownfield
Michael D. Jolly, Georgetown ★ Robert H. Price, Grapevine ★ Gilbert Robinson, Galveston
Ricardo Saldaña, Mission ★ Peggy Trahan, South Padre Island ★ Carl Wren, Manchaca
Gary L. Warren Sr., Executive Director*

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The Comptroller of Public Accounts only allowed \$27,035 to be re-appropriated for fiscal year 2001, because the \$27,035 represented the funds in excess of \$226,336, for fiscal year 2000. The Comptroller's Office interpreted Rider 2 to allow only the excess funds to be included in the "unexpended balance."

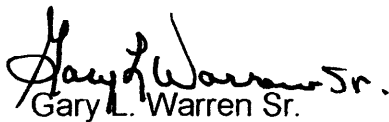
The Commission interprets the phrase "unexpended balance in the revolving loan fund," found in the last sentence of Rider 2, to mean that the full amount (unexpended monies less than or equal to \$226,336 plus any monies collected in excess of \$226,336) in the revolving loan fund at the end of fiscal year 2000 can be transferred to fiscal year 2001. The last sentence of Rider 2 was not limited by the Legislature to funds in excess of \$226,336. The Comptroller's Office interpretation of "unexpended balance" is more restrictive than what was written by the Legislature. The last sentence of Rider 2 does not read: "The funds **in excess of \$226,336** in the revolving loan fund at the end of fiscal year 2000 are hereby appropriated for fiscal year 2001." The last sentence of Rider 2 does read: "The unexpended balance in the revolving loan fund at the end of fiscal year 2000 is hereby re-appropriated for fiscal year 2001."

The erroneousness of the Comptroller's position is supported by the Legislative Budget Board's newly proposed Rider 2 (dated December 17, 2000), which in pertinent part is stated as follows:

"The unexpended balance of collections **in excess of \$251,670** in the revolving loan fund at the end of fiscal year 2002 is hereby re-appropriated for fiscal year 2003."

The Commission would like to award the full balance of the revolving loan fund at their open meeting in April 2001. All payments (with interest) of the loans by fire departments are deposited into the revolving loan fund. All of the monies in the revolving loan fund are re-awarded as new loans to fire departments for fire fighting facilities, apparatus and equipment. The Commission uses none of that money for any other purpose. It is the Commission's position that the additional \$34,563 that was unspent in fiscal year 2000 should be included in the term "unexpended balance" and, therefore, should be re-appropriated to the Commission's 2001 fiscal year budget.

Respectfully submitted,


Gary L. Warren Sr.
Executive Director