



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

March 30, 1939

Hon. J. Franklin Spears  
Chairman, Subcommittee on Finance,  
The Senate,  
Austin, Texas

Dear Senator Spears:

Opinion No. 0-538  
Re: Validity of judgment against  
the state.

In your letter of March 22, 1939, you requested an opinion from this department on the legality of the judgment in the case of Abilene Plumbing Supply Company, Inc. vs. The State of Texas, being cause No. 52,100 in the 126th Judicial District of Travis County, Texas, in connection with Senate Bill No. 44, which provides for an appropriation of money to pay off such judgment.

In reply to your request we wish to state that the Legislature in House Concurrent Resolution No. 56 on May 18, 1933, gave permission for the bringing of this lawsuit in an amount not to exceed \$1861.20, which was approved by the Governor on May 26, 1933, and pursuant to such permission, judgment was rendered against the State of Texas and the Board of Control and the members thereof, in their official capacity, for \$1861.20, plus 6% from the date of judgment on June 16, 1934, in the trial court, which judgment was affirmed by the Court of Civil Appeals for the Third Supreme Judicial District on December 12, 1934, in cause styled Franklin Brothers et al vs. Standard Manufacturing Company et al, as shown in 78 S. W. (2) 294. On February 9, 1938, the Supreme Court of Texas, after having granted a writ of error in such case, dismissed same on the ground that the application for writ of error did not set out that a motion for rehearing had been filed in the Court of Civil Appeals. The mandate was issued from the Court of Civil Appeals to the District Court of Travis County on December 10, 1938.

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It is the opinion of this department that the judgment is final and that the Legislature, if it so desires, may appropriate sufficient money to pay off such judgment.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Durward D. Mahon*  
Durward D. Mahon  
Assistant

DDM-MR

APPROVED:  
*H. F. Moore*  
FIRST ASSISTANT ATTORNEY GENERAL