



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-2705

Re: Whether an account for supplies sold the state for use of the Prison System must be approved by the Chairman of the Prison Board before payment is authorized.

In your letter of August 31, 1940, you apprise us of the following facts:

The Manager of the Texas Prison System makes request to the State Board of Control and purchases a large amount of supplies, to be delivered as needed. The contract order for the supplies is for in excess of \$5,000.00. The seller makes delivery to the Prison System of the goods ordered in small quantities, and invoices the same to the Manager of the Prison System, for an amount less than \$5,000.00. These invoices are prepared in the form of claims and are submitted to the Comptroller for payment, without the approval of the Chairman of the Prison Board. You request our opinion as to whether the Comptroller is authorized to issue warrant in payment of this invoice without the approval of the Chairman of the Prison Board.

Article 6166m, Vernon's Civil Statutes, reads as follows:

"On Monday of each week, the manager shall remit to the State Treasury all moneys received by him during the preceding week and belonging to the prison system. Such funds when received shall be deposited by the State Treasurer upon the warrant of the Comptroller to the credit of the general revenue fund. The manager shall be furnished with a receipt for such money, and a duplicate of such receipt shall be sent to the

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chairman of the Texas Prison Board, and another duplicate to the State Prison Auditor. All bills and accounts of said prison system shall be paid from appropriations made by the Legislature from the general revenue fund of the State, upon sworn accounts and warrants drawn by the State Comptroller on the State Treasurer in the same manner as provided by general law. Each account shall be approved by the manager and audited by the auditor of the prison system. The Comptroller shall have authority to issue warrants, and the Treasurer to pay the same, upon accounts approved by the manager and audited by the auditor, where the amount of such account does not exceed \$5,000.00; and where the amount of the account is in excess of \$5,000.00, before the Comptroller shall issue a warrant for the same or the Treasurer pay such warrant, such account shall be approved for payment by the chairman of the Prison Board."

If there is in fact but one account, its nature is not changed by having it evidenced by two invoices and submitted for payment on two claims. If in the case under consideration all the goods were purchased under a single contract and they were in fact delivered at the same time, it would be but one account under the statute, and the necessity for approval by the Chairman of the Prison Board could not be obviated by the preparation and submission of two claims, where both exceed \$5,000.00. If such be the facts the two claims should be considered as one and should bear the Chairman's approval before payment.

In your letter you also direct our attention to Acts 1935, 44th Legislature, First Called Session, p. 1600, ch. 403, relating to the industrial revolving fund of the prison system and which reads as follows:

"§ 1. From and after the effective date of this Act, the State Treasurer of the State of Texas shall deposit sufficient amount of money received by him from the General Manager of the Texas Prison System out of money earned by and belonging to the State Prison System in Huntsville, Texas, of Fifty Thousand Dollars (\$50,000), or so much thereof as may be necessary to create a fund of Fifty Thousand Dollars (\$50,000) to be known as the Industrial Revolving Fund of the Texas Prison System, to be used by said Prison

System in the purchasing of supplies and materials for tag plant, shoe and print shop and other industries and delivery of finished products as provided in the General Appropriation Bill for said System, and the State Treasurer shall at all times keep said Industrial Revolving Fund up to the maximum amount out of funds above provided, and said funds shall be used for the prompt payment in cash of all expenses properly payable out of said fund as appropriated by the Legislature in the General Appropriation Bill; such funds to be deposited by the State Treasurer in equal amounts in the Huntsville Bank and Trust Company at Huntsville, Texas, and the First National Bank at Huntsville, Texas, and said banks shall deposit with the General Manager of the Prison System, bonds or other securities to be approved by the Attorney General of the State of Texas sufficient to secure said deposit.

"§ 2. It shall be the duty of the depositories of the Industrial Revolving Fund so long as they retain such deposit to make a weekly report to the State Treasurer of the State of Texas as to the condition of said funds on deposit in said depositories.

"§ 3. This Act is not to be construed as an additional appropriation to the Texas Prison System from that made by the General Appropriation Bill, but is simply the authorization to the State Treasurer to create an Industrial Revolving Fund for the use of the Texas Prison System.

"§ 4. Payments made from the Industrial Revolving Fund shall be made upon duly authenticated certificates by the General Manager of the State Prison System and shall be paid by the State Comptroller of Public Accounts by proper warrants drawn on said funds as now required by law for the payment of other charges against the State of Texas."

You request our opinion as to whether that part of the aforesaid Article 6166m providing that the bills

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and accounts of the Prison System shall be paid from appropriations made by the Legislature from the General Revenue Fund of the State was superseded by the aforesaid Act creating the Industrial Revolving Fund.

Clearly the two acts are in conflict on the point which you inquire about. Under such circumstances the latest expression of the legislative will prevail. *Townsend vs. Terrell*, 16 S. W. (2d) 1053. Insofar as there is a conflict the Act creating the Industrial Revolving Fund superseded said Article 6156m. To that extent your second question is answered in the affirmative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By §

Glenn R. Lewis
Assistant

GRL:LM

APPROVED SEP. 30, 1940

GERALD C. MANN,
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE

By: B. W. B., Chairman