



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

AUSTIN 11, TEXAS

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WILL WILSON
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-2747

Re: Claim of Pan American Cattle Com-
pany on alleged overpayment of
franchise tax.

We acknowledge receipt of your letter of September 15, 1940, in which you request that we examine the attached claim of the Pan American Cattle Company in the amount of \$13.20.

Information made available to us indicates that this claim is based upon an alleged overpayment of franchise taxes growing out of a franchise tax report filed by a corporation with the Secretary of State in the early part of 1932. A warrant in the amount of \$13.20 was issued June 16, 1933, pursuant to appropriation made by House Bill No. 919, 43rd Legislature, Regular Session. This warrant was cancelled by your office on September 12, 1935.

The franchise report upon which this claim is based was prepared and filed by the corporation now claiming the right to a refund in the amount of \$13.20. There was no protest in payment and no effort appeared to have been made on the part of the Secretary of State to demand or enforce payment of any particular sum. We think it clear that the Pan American Cattle Company is in this instance a volunteer taxpayer, a taxpayer who has voluntarily made an overpayment has no legal claim against the State. An appropriation which is not supported by legal claim is void and unconstitutional in that it violates Article 3, paragraph 44, of the Constitution of Texas which prohibits appropriation based on claims not provided for by pre-existing law. See *Corsicana Cotton Mills, Inc. v. Sheppard, Comptroller, et al*, 71 S.W. (2d) 247.

It is the opinion of this office that the Pan American Cattle Company has no legal claim against the State and the claim submitted to us for examination is therefore disapproved.

Honorable George H. Sheppard, page 2. 0-2747

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/ Ross Carlton
Ross Carlton
Assistant

RC:GO:wc

APPROVED OCT 15, 1940
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman