



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Harry Knox, Chairman,  
State Board of Control  
Austin, Texas

Dear Mr. Knox:

Opinion No. 0-2815

Re: Whether or not the salary of a sponsor superintendent and other necessary workmen on a WPA project for work done in the present fiscal year may be paid out of the appropriation for the preceding fiscal year, where the project was agreed upon, begun, and money set aside in payment therefor in said preceding fiscal year.

We are in receipt of your request of October 9, 1940, asking an opinion from this department, as follows:

We are enclosing our complete file on a W. P. A. landscaping project now in progress on the grounds of the Kerrville State Sanatorium, Kerrville, Texas, said file containing a copy of the project proposal submitted by this Board, a copy of a letter showing acceptance and approval of this project by the President of the United States, and various other papers and letters pertaining to the progress and status of the project.

\*This work was begun during the fiscal year ending August 31, 1940, and the State Board of Control, as the authorized sponsor of this W. P. A. project, ordered the transfer of the sum of \$13,248 from the Kerrville State Sanatorium's support and maintenance appropriation for the year ending Aug. 31,

1940, to that institution's appropriation for general repairs and improvements. This amount represented the Sponsor's share in payment for this project, which the Federal Government has agreed to match with \$13,409; the estimated total cost of the project is \$26,855.

"The Federal Government furnishes all common labor for this project from its W. P. A. rolls, but this Board is required to furnish a Sponsor's Superintendent, which it has done. The work has necessarily extended beyond the fiscal year ending Aug. 31, 1940, and is still in progress. Therefore, this Board has submitted to the State Comptroller a payroll, a copy of which is enclosed herewith, requesting payment of the Sponsor's Superintendent's salary for the month of September, 1940, out of the Kerrville State Sanatorium's appropriation for general repairs and improvements for the fiscal year ending Aug. 31, 1940, since the work was agreed upon and begun by the Board of Control and the Federal Government in the last fiscal year, and a certain sum was earmarked and set aside out of appropriations for that year to provide full payment for the sponsor's share of the project. The Comptroller's office has refused to approve payment of this payroll out of last year's appropriation for that purpose.

"In view of the facts above presented, and in view of the importance of this question in connection with possible future building projects which cannot be completed within the term of one fiscal year, your valued opinion is respectfully requested on the following questions:

"1. Can the salary of the Sponsor's Superintendent and other necessary workmen on this W. P. A. project for work done in the present fiscal year on said project be paid out of an appropriation for the preced-

ing fiscal year, where the project was agreed upon, begun, and money set aside in payment therefor in said preceding fiscal year?

"2. In general, where the Board of Control enters into a construction or similar projects, purchasing its own materials and hiring its own workmen for the project, the time for completion of which will of necessity extend beyond the term of the fiscal year in which an appropriation is set aside in full payment for such project, can the workmen on such project be paid for work done in a subsequent fiscal year out of a preceding year's appropriation which has been so earmarked?"

We are of the opinion your questions should be answered in the negative.

These answers are controlled by the following considerations and opinions of this department:

Under Section 8, of Article VIII of the Constitution, no appropriation of money may be made by the Legislature for a longer term than two years. Moreover, the biennial appropriations by the Legislature are in truth annual appropriations for the term of two years, and the balance of sums appropriated for a given fiscal year revert to the State at the end of that fiscal year, in the absence of a specific re-appropriation.

It is the policy and meaning of the law that the appropriation is to be expended during the year for which it was made.

It does not follow, however, that an appropriation for use during the second fiscal year of the biennium may not be expended or committed during the first year. In other words, a purchase or contract contemplating an expenditure from the appropriation for the second year of a biennial period may nevertheless be validly entered into during the first year, where the supplies or equipment are not to be delivered or used, or the services are not to be performed until

the second year. Actual delivery, or performance, however, is not always the test. See our Opinion No. 0-2631. The question propounded by your letter, however, is not answered by these considerations, because it appears the improvement for which the appropriation was made so far as the second fiscal year is concerned has not only not been actually done, but there has been no contract for it, nor commitment of any funds available for the second year. The Board can not by the notional method of attempting to earmark the funds avoid the legal effect of the lapse of the appropriation for the expired year. This would be doing indirectly what can not be done directly, and, moreover, would be to defeat the very purpose of the annual feature of the appropriation. See our Opinion No. 0-320, wherein we said:

"In answer to the three inquiries propounded in your request, we hold that the appropriation effected under Section 18 of Article 5221c terminates by limitation of Section 6 of Article VIII of the Constitution of the State of Texas two years after the effective date of the Steam Boiler Inspection Act, and that whereas the moneys in the 'State boiler Inspection Fund' created thereby are earmarked for the purpose of the Act and dedicated thereto, nevertheless they can not be expended after the expiration of the original appropriation without further legislative action."

The principle announced in the preceding quotation governs the situation here, and the sponsor superintendent and workmen on the subject project may not be paid for work done in a subsequent fiscal year out of a preceding year's appropriation where, as here, there has been no contract whatsoever binding, or attempting to bind, such preceding year's appropriation.

The plan of the project does not purport to bind the United States, neither does it purport to bind the Board of Control to complete the task begun. It is optional with the Board, and there is nothing which could be held to be an expenditure, commitment or charge whatsoever upon the appropriation for the first fiscal year

of the funds remaining at the end of that year. This is indispensable to avoid a reversion thereof.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By



Cecil Speer  
Assistant

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APPROVED OCT 19, 1940



Acting - ATTORNEY GENERAL OF TEXAS