



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Jesse James
State Treasurer
Austin, Texas

Dear Mr. James:

Opinion No. O-5640

Re: Matter of payment and method of acquittance with reference to State General Revenue Warrant No. 415083 of date April 2, 1943, in the sum of \$91,424 payable to the National Biscuit Company.

Your letter requesting an opinion from this department is as follows:

"Under date of April 29, 1943, you issued your Opinion No. O-5240 with reference to General Revenue Warrant No. 415083 dated April 2, 1943, in the sum of \$91,424.00.

"We are handing you herewith our file on this matter which includes copies of letters addressed to National Biscuit Company, New York, N. Y., under date of May 7th, to Continental National Bank, Fort Worth, Texas, under date of May 6th, your original Opinion, photostat copy of Mr. Benbow's Power of Attorney, a Certificate signed by C. F. Eliss, Secretary of National Biscuit Company, copy of a Resolution adopted by the Executive Secretary of the Board of Directors of the National Biscuit Company under date of April 12, 1943, and the original Power of Attorney.

"This warrant will probably be called for payment about January 1, 1944, and we therefore ask your opinion as to whether or not the Certificate furnished by the Secretary of the National

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Biscuit Company and the Original Power of Attorney attached thereto are sufficient authority for us to accept for payment at or about January 1, 1944, the above mentioned warrant endorsed by Sidney Benbow, Attorney in fact for and on behalf of the National Biscuit Company."

We suggest that the matter be handled in the following way. Have the National Biscuit Company and Mr. Benbow jointly to execute an instrument of receipt and acquittance to be delivered to you at the time of payment of the warrant which may of course be made to Mr. Benbow.

We hand you herewith such an instrument (together with copies thereof and likewise copies of this opinion), which you may send to the National Biscuit Company in New York City and to Mr. Sidney Benbow, Houston, Texas, along with your letter advising them of the probably date when you will be in funds to pay this warrant.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/

Ocie Speer
Assistant

APPROVED OCT 14, 1943

/s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

OS:ned
attachment

Approved Opinion Committee by BWB, Chairman

STATE OF TEXAS
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS that this instrument witnesseth:

WHEREAS General Revenue Warrant No. 415083 for the sum of \$91,424.00 has been regularly issued on April 2, 1943, in favor of National Biscuit Company in pursuance of S. B. 185, Ch. 93, of the regular session of the 48th Legislature (1943); and,

WHEREAS Sidney Benbow, Attorney at Law of Harris County, Texas is the owner of an interest in said warrant on account of professional services rendered by him to the National Biscuit Company in connection with the recovery of judgment for the amount of said warrant as affirmed by the Supreme Court of Texas; and,

WHEREAS the State Treasury of Texas shortly will be in funds to pay such warrant; and,

WHEREAS it is necessary in pursuance of said S. B. 185, that there be executed and delivered to the State Treasurer a proper receipt acknowledging the payment of said judgment and releasing the State of Texas from any and all obligations created thereunder, upon the payment of said warrant,

NOW THEREFORE, we the National Biscuit Company, a private corporation organized under the laws of the State of New York, being the same corporate person named in S. B. 185, and likewise in said State Warrant, and Sidney Benbow of

Houston, Texas, the Attorney hereinbefore named, have this day received payment in full of said warrant, and have this day acknowledged receipt thereof and by these presents do acknowledge receipt thereof and likewise by these presents do here and now release the State of Texas from any and all obligations whatsoever created by said State Warrant No. 415083 or by that certain judgment recovered by National Biscuit Company against the State of Texas in the District Court of Travis County Texas, for the 53rd Judicial District and thereafter duly affirmed by the Supreme Court of Texas, and mentioned in S. B. 185 Ch. 93, of the Acts of the 48th Legislature of Texas.

WITNESS the signatures of said National Biscuit Company and the said Benbow, the former of which is attested by its corporate seal, this the _____ day of _____ A.D.1943.

NATIONAL BISCUIT COMPANY

By

C. P. Montgomery
Vice President

Sidney Benbow

THE STATE OF NEW YORK

COUNTY OF _____

Before me the undersigned, a Notary Public in and for the County of _____ in the State of New York on this day personally appeared C. P. Montgomery, Vice President of the National Biscuit Company, a corporation organized under the laws of the State of New York, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and instrument of the National Biscuit Company upon the consideration and for the purposes therein stated and in the capacity of Vice President of the National Biscuit Company.

Witness my hand and under the seal of my office
the the _____ day of _____ 1943.

Notary Public

(seal)

County
New York

STATE OF TEXAS
COUNTY OF HARRIS

On this day personally appeared before me the undersigned authority a Notary Public in and for Harris County Texas, Sidney Benbow known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and upon the consideration therein stated.

Given under my hand and official seal of office this _____ day of _____ A. D. 1943.

Notary Public, Harris County,
Texas