



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Affirmed by C-625

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

Dear Sir:

Opinion No. 0-6011
Re: Whether or not an encumbrance should be allowed to stand as a charge against funds appropriated for book binding for the year ending August 31, 1943, when the actual work of binding the books did not begin until April, 1944.

Your opinion request of May 8, 1944, reads as follows:

"On August 12, 1943, under provisions of the Departmental Appropriation Bill, I encumbered, for a State Department, a given amount of money for binding of certain books. This encumbrance was approved in the belief that the work was to begin at once. I now find that work did not start until during the month of April, 1944.

The enclosed file reveals that under instructions from the Board of Control, which were in effect at the time the encumbrance request was presented to me, the work was not to be started until after the fiscal year had closed.

Hon. George H. Sheppard, Page 2

"Should the encumbrance be allowed to stand as a charge against funds appropriation for book binding for the year ending August 31, 1943?"

From the file which you enclosed we have summarized the following facts with reference to the question under consideration, and this opinion is predicated upon the assumption that such facts are correct:

In accordance with the provisions of Section 2 (1) of the General Rider to the Departmental Appropriation Act of the 47th Legislature, the Comptroller on August 12, 1943, approved the expenditure of \$3,284.31 for book binding and encumbered the proper appropriation for this sum. Subsequently, on or about August 19, 1943, a requisition for this work was sent by the Board of Control to a book bindery which was under contract to do work of this kind for the State. However, at this time the Board of Control had issued an order that the book bindery was to work exclusively on the binding of textbooks between the months of May and October, so that at the time the encumbrance was made and the requisition was issued, it was impossible for the binding in question to be begun before October, 1943. Actually the binding was not begun until April, 1944.

This department has repeatedly held that supplies intended for use during a certain year must be purchased from the appropriation for that year, and that an appropriation for one year may not intentionally be used to purchase supplies which are to be consumed during a succeeding year. However, we have also recognized that an exception to this rule exists in the case of the purchase of so-called "capital assets" or supplies which from their nature will not be entirely used or consumed during a brief period of time. Thus in our Opinion No. 0-2631, addressed to you, we said:

"With respect to those supplies or things which, as you state, might be termed a 'capital asset of the State', the rule is that such supply

Hon. George H. Sheppard, Page 3

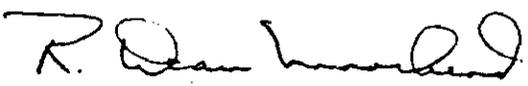
or fixture may be purchased and paid for out of the appropriation for any year of the biennium for which an appropriation has been made. Fixtures, equipment and supplies whatsoever that they do not perish with their use, but which may be continuously used after the year in which they are purchased are not governed by the identical principles applicable to those supplies which are consumed with their use. Thus, machines, fixtures, books, and the like, are not consumed during the year they are purchased, but they last for many years. Such 'capital assets' of the State may therefore be purchased and paid for out of the appropriation for any year of the biennium for which an appropriation for such article has been made. This is true regardless of the year in which the delivery is made, since the purchase during the proper year amounts to an expenditure or commitment of the appropriation for that year."

We feel that book bindings are "capital assets" within the meaning of the above cited Opinion, and that purchases of such bindings are governed by the principles stated in said Opinion. Since the appropriation in question was encumbered and the purchase order was issued prior to September 1, 1943, we feel that the book bindings were purchased during the fiscal year ending August 31, 1943, and that the appropriation for such fiscal year may be used in payment for the bindings. Consequently, your question is answered in the affirmative.

Trusting that the foregoing fully answers your inquiry, we are

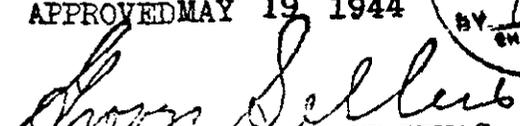
Yours very truly

ATTORNEY GENERAL OF TEXAS

By 
R. Dean Moorhead
Assistant

APPROVED MAY 19 1944




ATTORNEY GENERAL OF TEXAS

RDM:fo