



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

September 7, 1950

PRICE DANIEL
ATTORNEY GENERAL

This Opinion
Overrules Opinion
110-1686

Hon. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-1103.

Re: Legality of paying the State salary of the Market News Specialist of the Department of Agriculture under the submitted facts regarding his receipt of federal compensation for this work.

Dear Mr. Calvert:

The Fifty-first Legislature made an appropriation to the State Department of Agriculture in the General Departmental Appropriation Bill in a line item for salary as follows:

Market News Specialist . . . \$2,280.00 for each year of the current biennium.

The Department of Agriculture of Texas and the Agricultural Marketing Service, United States Department of Agriculture, function cooperatively in this market news service and have a common employee, a market news specialist, whose salary is paid part by the federal government and part by the State of Texas.

The Agricultural Department has presented a pay roll claim requesting that your department issue a warrant in favor of Mr. Glen L. Ellison, Market News Specialist, in the amount of \$190.00 against the above mentioned appropriation for his current July salary.

The records reveal that Mr. Glen L. Ellison is a federal employee, receiving an annual salary from the United States Department of Agriculture as a "Marketing Specialist in Livestock" under permanent civil service appointment, and he participates in federal retirement, annual leave, sick leave, etc.,

virtue of such appointment.

Based upon the stated facts, you request the opinion of this office as to whether or not you have the legal authority to issue a salary warrant to Mr. Glen L. Ellison, Market News Specialist, against the above appropriation.

Section 33 of Article XVI of the Constitution of Texas provides that:

"The Accounting Officers of this State shall neither draw nor pay a warrant upon the treasury in favor of any person, for salary or compensation as agent, officer, or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. . . ." (Emphasis added.)

The Market News Specialist is not a position included in the exceptions to Section 33 of Article XVI, prescribed by the Constitution of Texas.

Under the foregoing facts it is clear that Mr. Ellison is holding a position of profit under the United States. Therefore, you are advised that the payment of a salary warrant in favor of Mr. Ellison would be violative of Section 33 of Article XVI of the Constitution of Texas, and you have no legal authority to draw such warrant.

In your opinion request you refer to Attorney General's Opinion No. O-1686, approved by former Attorney General Gerald C. Mann on November 20, 1939, which holds that the payment of the salary appropriated by the Legislature for the Market News Specialist is lawful. It appears that this opinion was based upon an assumption of facts that do not now exist. Opinion No. O-1686 is overruled.

SUMMARY

Issuance of salary warrant to a State employee holding a position of profit under the

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United States Government is prohibited by Section 33, Article XVI, Constitution of Texas. Attorney General's Opinion O-1686 overruled.

Very truly yours,

APPROVED:

Everett Hutchinson
Executive Assistant

Charles D. Mathews
First Assistant

PRICE DANIEL
Attorney General

By 
C. K. Richards
Assistant

CKR:wb