



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

December 22, 1950.

Miss Doris H. Connerly
Acting State Librarian
Texas State Library
Austin, Texas

Opinion No. V-1139.

Re: Fiscal year appropriation from which to pay for microfilm copies of newspapers ordered for the State Library under the submitted facts.

Dear Miss Connerly:

Your request for an opinion reads as follows:

"For several years, the Texas State Library has been ordering microfilm copies of newspapers. These have been contracted for:

- (1) Back files of newspapers at fixed amounts
- (2) On annual basis so much per foot, paid by the year
- (3) On an annual basis so much per foot, paid by the month.

"Attached are photostat copies of letters which the State Library sends out each year in advance of renewal orders that are placed by the fiscal year.

"The Texas State Library is of the opinion that there is no difference in these annual orders and those placed on an annual basis for newspapers in print and paid for in advance, and that the invoices covering microfilm orders can be paid on the annual basis from funds of the fiscal year in which they are placed regardless of whether microfilms are received within the fiscal year or after the close of the year, and regardless of whether they are paid by the foot each month or whether contracted for several years of back files at a fixed amount.

"On the other hand, it is the opinion of the Comptroller's Department, Claims Division, that this is a service charge and

- (1) Back files of newspapers contracted for must be paid for out of the appropriation of the fiscal year in which the work was done regardless of the fiscal year in which the contract was made
- (2) Invoices can be paid only in the fiscal year in which the work was actually done when quoted by the foot and paid by the month for the reason that they are of the opinion that the item of cost is a service or labor charge.

"Your opinion is necessary on account of the conflicting views of the departments. Please advise which is right."

You have advised us that the term "on an annual basis" contained in your request means "on a fiscal year basis."

Item 15 of the appropriations for the support and maintenance of the Texas State Library is an appropriation of \$25,000 for each fiscal year of the current biennium for "books, subscriptions, memberships, maps, binding, book repairs, preparation for binding microfilms, microfilming." (Acts 51st Leg., R.S. 1949, ch. 615, at page 1281.)

* This office has repeatedly held that supplies intended for use during a certain fiscal year must be purchased from an appropriation for that year and that an appropriation for one fiscal year may not intentionally be used to purchase supplies which are to be consumed during a succeeding fiscal year. Att'y Gen. Ops. 0-2380 (1940), 0-6011 (1944), 0-6883 (1945). However, we have recognized that an exception to this rule exists in the case of so-called "capital assets" or supplies which from their nature will not be entirely used or consumed during a brief period of time, but may be continuously used after the year in which they were purchased. Att'y Gen. Ops. 0-2631 (1940), 0-6011 (1944).

We quote from Opinion O-2631 as follows:

"The cardinal rule is that money appropriated to a department or institution to be expended for supplies to be used and consumed during a given fiscal year, may not in any event be expended for supplies intended for use and consumption during another fiscal year. As pointed out in our Opinion No. O-2380, our appropriations, while made for two years by the Appropriation Act, are nevertheless specifically for each separate year of the biennium.

"...
"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 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 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.

"In construing the Appropriation Bill, as in construing any other legislative act, the intent of the Legislature governs. When the Legislature has authorized the purchase of equipment or supplies, which are not consumable by use during the year for which they are authorized to be purchased, it is obvious that the intent is not to provide for the operating expense

of the department for the year during which the appropriation is available for expenditure, but, on the contrary, to provide for an addition to the permanent operating facilities of the department or institution. Since the reason for the rule announced with respect to the type of expenditure involved in O-2380 does not exist with reference to this type of expenditure, the rule, of course, does not apply."

It was held in Opinion O-6011 that the claim of a book binder for binding books under authority of a requisition issued therefor by the State Board of Control on August 19, 1943, was properly payable from an appropriation for such purpose for the fiscal year ending August 31, 1943, notwithstanding the actual binding of the books did not begin until sometime during April, 1944. It was further held therein that "book bindings" are "capital assets" within the meaning of that term as defined in Opinion O-2631, supra.

You have informed us that microfilms of newspapers do not perish with use but may be continuously used for many years and will last as long, if not longer, than newspapers printed on paper made from wood-pulp, such as is commonly used for printing newspapers. We think such films may be properly classified as "capital assets" of the State of Texas. Therefore, the answers to your questions are controlled by Att'y Gen. Ops. O-2631 (1940) and O-6011 (1944).

In view of the foregoing, it is our opinion that the cost of microfilms of newspapers in each of the three instances stated in your request is chargeable to and payable from the appropriation contained in Item 15, supra, for the fiscal year in which the contracts for such films were made, regardless of the fiscal year in which the delivery thereof is made.

SUMMARY

Where the Texas Library and Historical Commission entered into a contract for the purchase of microfilms of newspapers for the Texas State Library, the cost of such microfilms may be paid from the appropriations to the Commission for such purpose for the fiscal year in which such contract was entered

into, notwithstanding delivery of the micro-films is not made until after the expiration of that year.

APPROVED:

C. K. Richards
Trial & Appellate Division

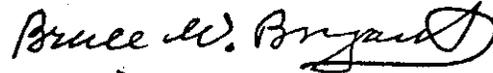
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Very truly yours,

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