



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

July 9, 1953

Hon. K. L. Berry
Adjutant General of Texas
Capitol Station
Austin, Texas

Letter Opinion No. MS-69.

Re: Authority of the
Adjutant General's
Department to oper-
ate and maintain
passenger automö-
biles during the
next biennium.

Dear Sir:

The several questions presented in your letter relate to the authority of your department under House Bill No. 111 of the Fifty-third Legislature to continue operation and maintenance of passenger automobiles now on hand as well as the authority and responsibility of your department under that act to sell such automobiles and make use of proceeds of such sales.

Relevant items in House Bill No. 111's appropriation to the Adjutant General (with emphasis supplied) are:

"For the Years Ending

	August 31, 1954	August 31, 1955
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"94. Travel Expense . . .	20,367	20,367
95. For extra help, medi- cal and hospital service fees, and miscellaneous wages; current charges, ex- cluding travel, sup- plies, commodities, and miscellaneous operating expense; repairs, and the ac- quisition of office equipment and other		

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property; transporting of property and <u>auto</u> expense	84,633	82,533."
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As pointed out in your letter, subparagraph a of Section 9, being a part of the general provisions contained in Article VI of House Bill No. 111, provides:

"None of the moneys appropriated in this Act may be expended for the purchase of passenger cars or of airplanes designed for passenger transportation unless authority to do so is explicitly stated by the language of this Act. Moreover, none of the moneys appropriated in this Act may be expended for the maintenance or operation of any State-owned passenger car or airplane designed for passenger transportation unless the authority to do so, and the number of passenger cars or airplanes to be maintained and operated, are explicitly stated by the language of this Act." (emphasis added)

Your first specific question asks: "Is the Adjutant General's Department of Texas authorized to expend monies appropriated in Item 95, as referred to above, for the operation and maintenance of passenger automobiles presently in the possession of the Adjutant General's Department?" While there might be some doubt whether Item 95 confers specific authority to operate and maintain passenger cars, it is clear that Item 95 does not explicitly state any number of cars to be maintained by your department. We construe Section 9a as also requiring such an explicit statement of number. Therefore, it is our opinion that Item 95 does not appropriate any funds for the operation and maintenance of passenger cars by the Adjutant General's Department.

The remainder of your specific questions are as follows:

"If the opinion rendered in answer to a above is in the negative, it is understood that passenger automobiles now in the possession of the Adjutant General's Department will necessarily have to be disposed of. If

this is true:

"1. Will disposal have to be made prior to September 1953?

"2. Is the Adjutant General's Department authorized to use the monies received from the sale of subject passenger vehicles to supplement the amount of money appropriated for travel expense during the fiscal year 1954 and or fiscal year 1955, and for the purchase of additional trucks or panel vehicles authorized in sub-paragraph b Section 9 of House Bill No. 111?"

In answer to question "1" and its predicate, we must advise that there is no general law requiring sale of state-owned passenger cars, and nothing in House Bill No. 111 or any other appropriation act can constitutionally require or necessitate sale of such cars prior to September 1st or any other date. In reference to question "2" you must necessarily refer to sales under Article 666, Vernon's Civil Statutes, since it provides the only available sale procedure. It is our opinion that after September 1, 1953, you would not be authorized to make such uses of the proceeds mentioned because the Fifty-third Legislature did not appropriate such proceeds in accordance with Article 666 as prior Legislatures, including the Fifty-second, have done. Acts 52nd Leg., 1951, ch. 499, Art. III, Sec. 2 (28), p. 1324; Att'y Gen. Op. No. V-1296 (1951). Cf. Acts 51st Leg., R.S. 1949, ch. 615, Sec. 2 (26), p. 1351. Since such proceeds are not appropriated during the next biennium, Article VIII, Section 6 of the Texas Constitution prevents their being paid out of the State Treasury during that period. Pickle v. Finley, 91 Tex. 484, 44 S.W. 480, 481 (1898); Att'y Gen. Op. No. MS-13 (1953).

Yours very truly,

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By
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