



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 16, 1957

Honorable O. B. Ellis
Director
Department of Corrections
Huntsville, Texas

Opinion No. WW-280

Re: Legality of making
payments after August
31, 1957, under the
Eastham prison equip-
ment contract let on
March 14, 1955.

Dear Sir:

Your request for an opinion dated September 18, 1957, relates to the legality of the issuance of a warrant to pay a claim against the appropriations contained in Acts 53rd Legislature, 1st Called Session, 1954, ch. 8, Sec. 2, p. 21. An invoice for partial payment of the contractual obligation to the Southern Steel Company was returned on September 10, 1957 by the Comptroller with a note stating:

"I am returning the enclosed voucher for the reason the account being incurred in February 1955 is now barred from payment by a statute of limitation of this state."

The question presented is whether or not this claim on the 1954 appropriation is barred by Article 4357, Vernon's Civil Statutes, which reads in part:

". . . No claim shall be paid from appropriations unless presented to the Comptroller for payment within two (2) years from the close of the fiscal year for which such appropriations were made, but any claim not presented for payment within such period may be presented to the Legislature as other claims for which no appropriations are available. . . ."

The close of the fiscal year following the 1954 appropriation was on August 31, 1954 thus claims against the original 1954 appropriation would normally be barred

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after August 31, 1956. However, the unexpended balance of this 1954 appropriation was reappropriated by Acts 54th Legislature, 1955, ch. 519, p. 1199 and again reappropriated by Acts 55th Legislature, Regular Session, 1957, ch. 385, p. 1049.

Your question is thus narrowed to whether or not reappropriation of the unexpended balances for the same purposes as prior appropriations extends the claim period of Article 4357 for two years. In construing the provisions of Article 4357 it is stated in Attorney General's Opinion V-1416 (1952):

"The provision of Article 4357 here involved is a limitation statute, and it must be construed in the light of the object for its enactment. The purpose of this provision was to eliminate a necessity for the Comptroller to carry stale appropriation accounts on his books in the likelihood that there might be outstanding claims against them. It was not designed to affect the payment of claims against accounts which have been kept current by reappropriation. . . ."

See also Attorney General's Opinion MS-10:

"This construction of Article 4357 was not intended to limit the fiscal years to the first year the appropriated funds were available, but is intended to apply to all fiscal years during which the appropriated funds are available for disbursement. . . ."

We think it is clear, therefore, that the claim in question is not barred by Article 4357 because the unexpended balance has been kept current by reappropriation. It is our further opinion that Section 6 of Article VIII of the State Constitution would not be violated by the payment of the claim under consideration. The intention of the framers of Section 6, Article VIII was to allow the Legislature to re-examine every two years the disposition of unexpended balances of prior appropriations. This the Legislature has done by reappropriation. There is no appropriation of money for a longer term than two years.

You are further advised that the reappropriation in 1957 extended the period for payment of claims of the

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Southern Steel Company until August 31, 1959.

SUMMARY

Article 4357, Vernon's Civil Statutes does not prevent payment after two fiscal years of claims from the unexpended balance of a prior appropriation which has been kept current by reappropriation.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Maco Stewart
Assistant

MS:wam

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

B. H. Timmins, Jr.

John B. Webster

W. V. Geppert

REVIEWED FOR THE ATTORNEY GENERAL

BY:

James N. Ludlum