



*J. C. Davis*

**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

December 16, 1957

Honorable Raymond W. Vowell  
Acting Executive Director  
Board for Texas State Hospi-  
tals and Special Schools  
Austin, Texas

Opinion No. WW-312

Re: Whether a certain claim is  
barred by the provisions of  
Article 4357, Revised Civil  
Statutes of Texas, 1925, as  
amended.

Dear Mr. Vowell:

The claim involved in your request was presented to the Board for Texas State Hospitals and Special Schools on the 8th day of July, 1957, and was approved by the Board on the 24th day of September, 1957, and presented to the Comptroller for payment between the 24th day and the 30th day of September, 1957. The claim arose by virtue of service rendered pursuant to a contract entered into on the 14th day of April, 1954, for architectural services in connection with construction at the East Texas Tuberculosis Hospital.

House Bill 111, Acts of the 53rd Legislature, Regular Session, 1953, Chapter 81, page 144, appropriated \$2,100,000.00 out of the State Hospital Fund to the East Texas Tuberculosis Hospital for constructing and equipping buildings. This appropriation was made for the fiscal year ending August 31, 1955.

The 54th Legislature, in House Bill 140, made the following appropriation to the East Texas Tuberculosis Hospital for the fiscal years ending August 31, 1956 and August 31, 1957:

" . . .

"Any unexpended balances in the appropriation for constructing and equipping buildings for the East Texas Tuberculosis Hospital made in Item 7, Section 1, Article II (page 144) of Chapter 81 (House Bill No. 111), Acts of the Fifty-third Legislature, Regular Session, remaining as of August 31, 1955, are hereby reappropriated for the same purposes specified in that Act for the biennium beginning September 1, 1955."

Article 4357, Revised Civil Statutes of Texas, 1925, providing for the keeping of a list of claims by the Comptroller

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of Public Accounts was amended in 1931 by the provisions of House Bill 495, Acts of the 42nd Legislature, Regular Session, 1931, Chapter 243, by inserting the following provisions:

"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 phrase "within two (2) years from the close of the fiscal year for which such appropriations were made" refers to the fiscal year during which the appropriated funds become available for disbursement, and it is not limited to the first year the appropriated funds are available, but applies to all fiscal years during which the appropriated funds are available for disbursement. Attorney General's Opinions V-1416 (1952) and MS-10 (1953).

Prior to the 1931 amendment to Article 4357, the Comptroller had no power to close out accounts on various appropriations since there was no limitation as to when claims against such appropriations could be presented. Subsequent to the 1931 amendment, the Comptroller could close out the accounts on the various appropriations after two years had expired from the close of the fiscal year for which the appropriations involved were made. The close of the fiscal year for which the original appropriation of \$2,100,000.00 was made was August 31, 1955, and the close of the fiscal year for which the reappropriation was made was August 31, 1957.

Since the claim involved in your request is payable out of the appropriation for the fiscal years ending August 31, 1956, and August 31, 1957, and has been presented within two years from August 31, 1957, it is our opinion that the claim is not precluded from being paid by the provisions of Article 4357.

Any statement contained in any former Attorney General's Opinion concerning a construction of Article 4357 contrary to this Opinion is hereby expressly overruled.

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SUMMARY

A claim payable out of an appropriation for the biennium ending August 31, 1957, may be presented to the Comptroller until August 31, 1959.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By *John Reeves*  
John Reeves  
Assistant

JR:jl:wb

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman  
John H. Minton, Jr.  
Mrs. Marietta McGregor Payne  
B. H. Timmins, Jr.  
Fred Werkenthin

REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert