



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

January 17, 1962

Honorable D. C. Greer
State Highway Engineer
Texas State Highway Department
Austin, Texas

Opinion No. WW-1243

Re: Whether the Texas Highway Department has the authority to purchase steel for the manufacture of license plates and whether appropriated funds are available for the purchase of such steel and related questions.

Dear Mr. Greer:

In your letter requesting an opinion from this office on the question of whether the Texas Highway Department has the authority to purchase steel for the manufacture of license plates and certain other related questions, you mentioned that for many years the Texas Highway Department has obtained the license plates which it issues with vehicle registrations from the Department of Corrections.

You further mentioned that because of the lack of storage space for the steel which goes into the plates, the Department of Corrections has had to let contracts for the purchase of steel which called for monthly deliveries, and that the only bids which the suppliers would submit on this basis included escalator clauses which provided for raising the bid prices in the event of increases in steel prices, transportation costs, and the like prior to delivery. Also, in some instances, strikes have interfered with the delivery of steel necessitating the purchase of more expensive aluminum with which to manufacture the license plates.

The Board of Control has previously suggested that extra storage space be built in order to obtain the savings that could be realized by taking delivery of a year's supply of steel at one time, and pursuant to such suggestion the Legislature has appropriated funds for the construction of a warehouse for such purposes which is now nearing completion.

Your letter further mentioned that the Department of Corrections manufactures the plates on what approximates a vehicle registration year basis and receives their appropriation on a fiscal year basis. At the present time, the Department of Corrections has expended approximately one-half of their current appropriation on the manufacture of 1962 license plates which is now coming to a close. However, at the present time, the Department of Corrections not only does not have sufficient funds available to purchase a full year's supply of steel, to thereby take advantage of the financial savings which could be made by use of their increased storage capacity, but because of the unanticipated increase in the number of license plates required by the passage of House Bill 1082, Acts of the 57th Legislature, Regular Session, 1961, Chapter 259, page 554, the Department of Corrections will not be able to purchase sufficient materials to sustain production of the 1963 license plates for the remainder of the fiscal year.

Consequently, in order to insure that the production of 1963 license plates will not be jeopardized and to obtain for the State the savings that can be realized by the bulk purchase of steel, the Texas Highway Department and the Department of Corrections have tentatively agreed on the following plan:

"1. The Department of Corrections will deduct from its funds which are currently available for the manufacture of license plates an amount necessary to buy the paint and other supplies needed to manufacture the plates and will then requisition and purchase the amount of steel which can be paid for with the remainder of such funds.

"2. The Highway Department will requisition and purchase any additional steel necessary to produce the 1963 plates.

"3. The Highway Department will purchase from the Department of Corrections all the plates it can manufacture from its own steel at the price established as provided in the appropriation bill.

"4. The remainder of the plates will be manufactured by the Department of Corrections out of the Highway Department's steel for the same price, less the cost of the steel.

"5. After the 1963 plates are manufactured, about the end of calendar year 1962, the Department of Corrections will have their 1962-1963 appropriation available to purchase a year's supply of steel and can go on into the manufacture of the 1964 plates on schedule."
(Emphasis added)

The Comptroller of Public Accounts has advised the Texas Highway Department that a warrant will not be prepared to pay for steel purchased by the Texas Highway Department to be used in the manner set forth in the tentative agreement between the Texas Highway Department and the Department of Corrections. The basis for the position of the Comptroller of Public Accounts is that such an arrangement would in effect supplement the appropriations made to the Department of Corrections for the same purpose and thus would be in violation of certain provisions of Article III of Senate Bill 1, Acts of the 57th Legislature, First Called Session, 1961, set forth hereafter.

In view of the position being taken by the Comptroller of Public Accounts you have requested our opinion upon the following questions:

"1. Does this Department have the authority to purchase steel for the manufacture of license plates and funds appropriated with which to pay for such steel?

"2. Do the two Departments have the authority to enter into and carry out an agreement such as the one outlined above?"

In the departmental appropriation to the Board of Corrections in Senate Bill 1, there is found the provision that:

"It is the intention of the Legislature that the sums appropriated hereinabove shall constitute the maximum amounts required to operate the Department of Corrections during the biennium beginning September 1, 1961, and that except for the exchange of cottonseed for cottonseed meal and cake, and other products or by-products of agriculture, livestock or industrial production in excess of the quantities required for consumption shall be sold, or disposed of through inter-agency contract, and the revenues accruing shall be deposited in the General Revenue Fund. Notwithstanding any other provisions of this Act, none of the revenues so deposited are reappropriated except as they shall apply to the sales of equipment, salvage, refunds and to recovered damage claims." (Emphasis added)

In the departmental appropriation to Texas Highway Department in Senate Bill 1, there is found the provision that:

"In addition to the purposes specified in appropriation Item No. 13 above, any necessary amounts of the moneys thereby appropriated may be used in the Highway Department to reimburse the State Prison System for the cost of manufacturing motor vehicle license plates, and said Prison System shall be reimbursed as license plates are delivered and invoices are rendered to the Highway Department. At the time manufacture is started, the State Board of Control or its successor shall fix a price to be paid per license plate, and shall use as the basis for such price the costs of steel, paints, and other materials purchased, and the inmate maintenance cost per day, and overhead expense, and miscellaneous

charges, and the amount of profit previously approved for such work."

In Section 5 of Article III of Senate Bill 1, entitled Executive, Legislative and Administrative Departments and Agencies Special Provisions, the Legislature has provided that:

"State moneys appropriated in this Article are to be construed as the maximum sums to be appropriated to and for the several purposes named herein; and the amounts are intended to cover, and shall cover, the entire cost of the respective items and the same shall not be supplemented from any other sources excepting such Federal funds as are designated or estimated. No expenditures shall be made, and no obligations incurred, by any department or agency except as provided by the terms of this Article and by the general provisions in Article V of this Act." (Emphasis added)

Funds appropriated to the Texas Highway Department in Item No. 13 of the departmental appropriation found in Article III of Senate Bill 1, may be used by the Texas Highway Department for the purpose of obtaining license plates. The pertinent limitations upon the use of these funds by the Texas Highway Department to obtain license plates from the Department of Corrections are twofold. First, the method of reimbursing the Department of Corrections for these license plates as set forth in Senate Bill 1, must be followed. Secondly, there must not be any arrangement which would, in effect, amount to a supplemental appropriation to the Department of Corrections.

Under the tentative arrangement between the Texas Highway Department and the Department of Corrections, the price paid by the Texas Highway Department for the steel furnished to the Department of Corrections would be deducted from the amounts reimbursed to the Department of Corrections by the Texas Highway Department for manufacture of the plates. Consequently, there would be no finan-

cial gain to the Department of Corrections, nor would the license plates be more costly for the Texas Highway Department to obtain. Therefore, we are of the opinion that the proposed arrangement between the Texas Highway Department and the Department of Corrections would not result in a supplemental appropriation to the Department of Corrections.

In turn, the method of reimbursing the Department of Corrections for manufacture of the license plates would not be altered by the proposed arrangement for the reason that the price to be paid per license plate by the Texas Highway Department will be taking into account the price of the steel furnished by the Texas Highway Department.

As to the authority of the Texas Highway Department to purchase the steel which is to be furnished to the Department of Corrections for the manufacturing of license plates, the funds made available to the Texas Highway Department in Item No. 13 of the departmental appropriation to the Texas Highway Department are for the purpose of:

" . . . operating expenses involved in establishing, planning, constructing, and maintaining a system of State Highways as contemplated and set forth in Chapter I, Title 116, Revised Civil Statutes of 1925, and Chapter 186, General Laws, Thirty-ninth Legislature, Regular Session, and amendments thereto.
. . ."

The activities of the Texas Highway Department pursuant to Article 6675a-13, under which the Texas Highway Department has both the authority and the responsibility to issue license plates upon payment of the prescribed registration fee by applicants for motor vehicle registration, and being a provision found in Chapter I, Title 116 of the Revised Civil Statutes of 1925, is therefore a form of activity for which the Texas Highway Department may make expenditures from the funds appropriated to the Texas Highway Department by virtue of Item No. 13 of the departmental appropriation.

Should the purchase of material for the manufacture of the license plates be necessary to insure the availability of such license plates to the Texas Highway Department in the carrying out of its responsibility to furnish license plates, then we are of the opinion that the expenditure of funds for the purchase of such steel would be a proper, necessary and legitimate expenditure of funds appropriated to the Texas Highway Department by Item No. 13 of the departmental appropriation found in Article III of Senate Bill 1. The special provision contained in the departmental appropriation to the Texas Highway Department, quoted heretofore, dealing with reimbursement to the Department of Corrections for manufacture of license plates would not serve as a restriction upon the Texas Highway Department as to the purchase of the steel or upon the furnishing of such steel to the Department of Corrections pursuant to the proposed agreement, as such special provision merely specifies the manner in which the Department of Corrections will be reimbursed for the license plates it manufactures.

As we are of the opinion that the proposed agreement between the Texas Highway Department and Department of Corrections is not in violation with the provisions of Senate Bill 1, it follows that there is no prohibition against the Texas Highway Department and Department of Corrections entering into and carrying out the proposed agreement set forth heretofore. In turn, Article 4413(32), Vernon's Civil Statutes, the Interagency Cooperation Act, would clearly authorize these agencies to enter into the type of agreement proposed as the terms thereof, under the proposed arrangement in the instant case, would not be in violation of the laws of this state, and particularly Senate Bill 1.

S U M M A R Y

Under the terms of the proposed agreement between the Department of Corrections and the Texas Highway Department, the Texas Highway Department has the authority to purchase steel which will

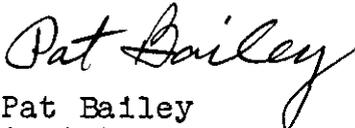
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be furnished the Department of Corrections for the manufacture of license plates for the Texas Highway Department. The purchase price of such steel could be paid from the funds appropriated to the Texas Highway Department in Item No. 13 of the departmental appropriation to the Texas Highway Department found in Article III of Senate Bill 1.

The Department of Corrections and the Texas Highway Department have the authority to enter into and carry out the agreement set forth herein.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Pat Bailey
Assistant

PB:lg:zt

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Elmer McVey
Howard Mays
Winston P. Crowder
Bob Eric Shannon

REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.