



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

September 14, 1971

Honorable James U. Cross
Executive Director
Parks and Wildlife
Department
John H. Reagan Building
Austin, Texas 78701

Opinion No. M- 952

Re: Authorization of
Parks and Wildlife
Department to Expend
Certain Funds for
the Construction of
a State Office Building.

Dear Mr. Cross:

You have requested the opinion of this office as to the following question:

"Is the Parks and Wildlife Department authorized to expend funds for the construction of a State office building from each of the following funds:

- a. General Revenue Fund, specifically, any 'lapsed funds' which may remain at the end of a fiscal year;
- b. State Parks Funds No. 64;
- c. Special Game and Fish Fund No. 9;
- d. Land and Water Recreation and Safety Fund No. 63;
- e. Special Boat Fund No. 59;
- f. Conservation Fund No. 223;
- G. Texas Parks Fund No. 31."

Section 6 of Article VIII of the Constitution of Texas provides that no money shall be drawn from the Treasury, but in pursuance of specific appropriations made by law. Pickle v. Finley, 91 Tex. 484, 44 S.W. 480 (1898). The 62nd Legislature in the current General Appropriations Act, Senate Bill 11, Acts 62nd Leg., R.S., 1971, as amended by Senate Bill 7, Acts 62nd Leg., 1st. C.S., 1971, made the following appropriation to the Parks and Wildlife Department for the biennium ending August 31, 1973:

"In addition to the funds appropriated hereinabove, there is hereby appropriated out of such funds as may be available to the Parks and Wildlife Department an amount NTE \$8,000,000 for construction of a State office building for the Parks and Wildlife Department to be located at McKinney Falls State Park including facilities for wildlife scientific research and comprehensive park and statewide outdoor recreational planning. Such amount to cover planning, site development, professional services and fees, salaries and wages, travel, capital outlay including utilities, equipment, park areas and other improvements related thereto and all other necessary costs and expenses whether by contract or direct payment."

It is noted that the above quoted appropriation does not specify from what fund or funds said appropriation is made.

The appropriation is made for the construction of a State office building to be used for wildlife scientific research and comprehensive park and statewide outdoor recreational planning. Therefore, such item of appropriation may be expended from the available special funds listed in your request as well as the General Revenue Fund. See: Attorney General's Opinion M-574 (1970). In this connection House Bill 1565, Acts of the 62nd Legislature, Regular Session, 1971, Chapter 798, page 2459 (codified in Vernon's as Article 4386b-2 V.C.S.), provides:

"Section 1. There is hereby established a fund in the State Treasury to be known as the 'Parks and Wildlife Operating Fund.' The Parks and Wildlife Commission is authorized to transfer any funds appropriated to the Parks and Wildlife Department by the Legislature for Personal Services, Travel, Consumable Supplies and Materials, Current Operating Expenses and Capital Outlay, as these terms are used in the Act. All expenditures by the department from this special fund shall be made only for such purposes for which appropriations are made by the General Appropriations Act."

"Section 2. The Parks and Wildlife Operating Fund shall be used for the purposes specified by law or hereafterwards authorized by law, and nothing shall be done by any officer or employee of the Parks and Wildlife Department or the Parks and Wildlife Commission to jeopardize or divert the Special Funds or any portion thereof, including any federal aid the department receives or administers."

In Attorney General's Opinion M-574, it was pointed out that: "The Parks and Wildlife Department was created by the provisions of Article 978f-3a, Vernon's Penal Code. This article provides that the Special Game and Fish Fund shall be used for the purposes provided in the act and for purposes provided by law, and also prohibits the use of money heretofore authorized for park purposes to be expended for any other purpose than the operation, maintenance or development of State Parks".

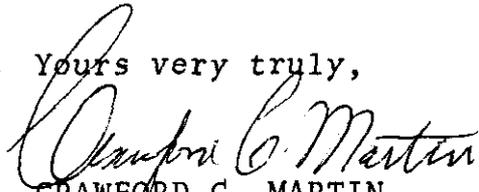
It is our opinion that a State office building for the Parks and Wildlife Department to be used for "wildlife scientific research and comprehensive park and statewide outdoor recreational planning" is not a diversion of the purpose for which the special funds may be used.

SUMMARY

Monies specifically appropriated to the Parks and Wildlife Department for the construction of a State office building

at McKinney Falls State Park is payable out of the General Revenue Fund, and such moneys as may be available in the State Parks Funds No. 64, Special Game and Fish Fund No. 9, Land and Water Recreation and Safety Fund No. 63, Special Boat Fund No. 59, Conservation Fund No. 223, and Texas Parks Fund No. 31.

Yours very truly,



CRAWFORD C. MARTIN

Attorney General of Texas

Prepared by John Reeves
Assistant Attorney General

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