



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Gib Gilchrist, President
Agricultural and Mechanical College of Texas
College Station, Texas

Dear Sir:

Opinion No. O-6942

Re: Whether or not the A. & M. College may legally use its local funds as a revolving fund for the payment of laborers, and submit payrolls in favor of the College to the Comptroller of Public Accounts drawn against the appropriation made from the General Revenue Fund to reimburse the College.

We are in receipt of your letter requesting an opinion from this department as follows:

"We are submitting herewith two questions on which we would like to have a ruling from you.

"1. Can the A. & M. College legally use its local funds (referred to in Subsection (3) of House Bill No. 173, Acts of the Regular Session of the Forty-Ninth Legislature, known as the Educational Appropriation Bill) as a 'revolving fund' for the payment of laborers and submit payrolls in favor of the College to the Comptroller of Public Accounts drawn against the appropriations made in said Act from the General Revenue and other funds, to reimburse the College?

"2. Can the Comptroller of Public Accounts legally issue warrants in favor of the College in payment of payrolls drawn against the appropriations from the General Revenue Fund and other funds to reimburse the College for payments made by using its local funds as a revolving fund?

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"This ruling is requested for the reason that we are having considerable difficulty in employing laborers paid from State Appropriations on account of the delay in making their earnings available. Under the most favorable conditions they do not receive their wages for a week or more after they are due. For many years prior to the fiscal year 1931-32 the College paid its laborers as set forth in Question No. 1 above and was reimbursed as set forth in Question No. 2. This method of payment was authorized by at least one Legislature, namely the Fortieth, as set forth in Chapter No. 101 of the General and Special Laws of its First Called Session.

"We have been authorized by the State Auditor to say to you that he has full information on this subject and perhaps can assist you in knowing all of the facts and the difficulties under which we have to operate at present by making all payments from State Appropriations directly to the payee."

Item No. 410 of the current appropriation for A. & M. College contained in House Bill No. 173, Chapter 377, Acts of the 49th Legislature, appropriates \$129,036.00 for the current fiscal year for "general maintenance, including supplies, material, labor, equipment, traveling and contingent expenses."

Subsections 3 and 4 of the general provisions appended to House Bill No. 173 are as follows:

"Subsection (3). Institutional Receipts. No property belonging to any of the institutions herein provided for, or any agency thereof, shall be sold or disposed of without the consent of its governing board, and all proceeds from the sale of such property, from labor performed, from the sale of materials, crops and supplies, from fees, and any and all other receipts shall become and are hereby appropriated as maintenance or contingent fund to be expended under the direction and with the approval of the governing board having jurisdiction. Said governing boards are authorized to use out of the proceeds

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of said receipts and funds, in accordance with the provisions of this Act, such amounts as they shall deem necessary for the support, maintenance, operation and improvements of said institutions. Any balances remaining to the credit of any of said institutional local funds at said institutions or in the State Treasury at the end of any fiscal year are hereby reappropriated for the above-mentioned purposes for the succeeding year.

"Subsection (4). Local Depositories. The governing boards of the respective institutions for which appropriations are made in this Act are hereby authorized to select depository banks for the safekeeping of local funds collected by said institutions. The Boards shall require said depository banks to furnish adequate surety bonds or securities to be posted for the assurance of safety of such deposits. The depository bank or banks so selected are hereby authorized to pledge their securities for assurance of safety for such funds. All local funds shall be deposited intact in these depositories within five (5) days from date of collection. The governing boards may require the depository so designated and selected to pay interest on deposits at a rate to be agreed upon by said depositories and said boards.

"It is hereby declared the legislative intent that the governing boards and heads of the several State institutions of higher learning shall not borrow money from any person, firm or corporation to be repaid out of local funds, other than as specifically authorized by legislative enactment."

In our Opinion No. O-4111, this department had under consideration a question in many respects similar to the problem which you have submitted. We quote excerpts from said opinion as follows:

"This office desires your opinion as to whether or not any of the three following transactions are contrary to law:

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"....

"Case No. 3. A General Revenue Warrant of the State was issued to an employee for her October salary. Although she resigned on October 15th, the warrant was written to her for the entire month, and she discounted it, keeping one-half (1/2) for herself and the other one-half (1/2) was paid by the institutional cashier to another employee, who supposedly replaced the original employee."

"....

"An appropriation is the setting apart from the public revenues of a certain sum of money for a specified purpose, in such manner that the executive officers of the government are authorized to apply that money, and no more, to that purpose, and to no other. Words and Phrases, Permanent Edition, Volume 3, Pages 819 et seq.; State v. Moore, 69 N.W. 373, 376, 50 Neb. 88, 61 Amer. State Rep. 538; McCombs v. Dallas County (Civ. App.) 136 S.W. (2d) 975.

"Every appropriation has the effect of creating a special fund, which is to be expended only for the purpose for which the appropriation was made. To draw a warrant against the appropriation, ostensibly to apply the funds to the purpose for which they are provided, and then to deposit the money to the credit of the local fund of the college, is to apply the money appropriated to a purpose for which it was not authorized by the Legislature. It follows that each of the first two fact situations set out in your letter present instances of unauthorized and therefore illegal diversions of the public moneys involved.

"With respect to the third fact situation presented in your letter, you are advised that warrants against the appropriations made to pay the salaries of employees of the various departments and institutions of learning of this State are in no instance to be drawn in favor of the department head or school authority; but in each case the warrant against the appropriation is to be drawn in favor of the person rendering the

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service for which the appropriation is provided, and for no greater amount than is actually due such person. The appropriation provides authority for the department or school head to enter into contracts with reference thereto, but the money provided is not to be drawn from the Treasury by the department or school head and by him dispersed in cash to the employees; the claim of the employee for payment from the appropriation is to be presented to the Comptroller on the institutional payroll, certified as correct by the school head, and the warrant is to be drawn in favor of the employee himself. See Articles 4344, 4350, 4355, 4356, 4358 and 4359, Revised Civil Statutes, 1925.

"It follows that in the third instance given in your letter, the warrant should have been drawn in favor of the employee, as payee thereof, only for the amount actually due her as salary, to wit, salary for one-half month, and a claim should have been presented to the Comptroller for the issuance of a separate warrant against the same appropriation for the amount of salary due the employee who replaced her. The action of the school authorities in certifying the claim for the issuance of a warrant for an entire month's salary to the original employee, when only one-half month's salary was due to her, and in delivering the warrant to the original employee for the full month's salary, procuring cash from the original employee, the payee of the warrant, for the one-half month's salary not due her, and paying over the cash direct to the employee who replaced the original employee, was without authority of law, and therefore illegal."

We think the language of the above opinion is applicable in this instance. We find no provision in the statutes or in the appropriation bill which would authorize the payment of labor claims in the manner that you suggest.

We note the statement in your letter that the method suggested by you was authorized by the Legislature in 1927. We think, however, that the continuous failure of the Legislature since that time to enact similar provisions in subsequent appropriations indicates that it did not want the practice

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continued. We think such action, or rather inaction, on the part of the Legislature is particularly significant in view of the fact that for the past several years, the departmental construction on the part of the Comptroller has been that payroll warrants must be made payable to the employees.

Accordingly, we answer your inquiry by stating that there is no present legal authority for following the payroll method suggested in your letter.

Trusting that this sufficiently answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

J. Arthur Sandlin
J. Arthur Sandlin
Assistant

JAS:db

APPROVED DEC 20, 1945