



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

May 27, 1963

Honorable Thomas S. Bishop  
Major General TexARNG  
The Adjutant General of Texas  
Austin, Texas

Opinion No. C-85

Re: Whether appropriations contained in Senate Bill 1, Acts of the 57th Legislature, First Called Session, Chapter 62, page 203, may be expended to purchase medals authorized by Senate Bill 279, Acts of the 58th Legislature, Regular Session.

Dear General Bishop:

Your request for an opinion reads as follows:

"You are respectfully requested to give your opinion concerning the following specifically outlined matter.

"Senate Bill 279 entitled 'Texas Code of Military Justice' passed the Texas Legislature and was signed by Governor Connally on May 3, 1963. The bill becomes law 90 days after the adjournment of the Legislature.

"Article 5789, Awards, Decorations and Medals of Senate Bill 279 authorizes new State Medals to National Guardsmen of Texas. If the Texas Legislature adjourns prior to June 1, 1963, can the new State Medals as authorized under Senate Bill 279 be purchased out of the current appropriations to the Adjutant General's Department."

Item 9 of the appropriation to the Adjutant General's Department, contained in Senate Bill 1, Acts of the 57th Legislature, First Called Session, Chapter 62,

Hon. Thomas S. Bishop, page 2 (C-85)

page 203, at page 252, reads as follows:

"ADJUTANT GENERAL'S DEPARTMENT

For the Years Ending	
August 31,	August 31,
1962	1963

"Out of the General Revenue Fund

" . . .

"9. For purchase of medals and awards to National Guardsmen as currently authorized by statute, resolution or orders by the Adjutant General, the sum of	\$2,500	\$2,500 "
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In construing the above-quoted appropriation, it was held in Attorney General's Opinion WW-1330 (1962):

"A literal construction of these provisions clearly show that the provisions of the appropriation to the Adjutant General's office for the purchase of service medals are in harmony with the statutory provisions which specify the powers and duties of the Adjutant General.

"Therefore, it is our opinion that the Adjutant General has authority to purchase medals to be awarded to National Guardsmen of Texas out of the current appropriations to the Adjutant General's Department."

Article 5789, Vernon's Civil Statutes, as amended by Senate Bill 279, Acts of the 58th Legislature, Regular Session, provides for the awarding of certain specified awards, decorations and medals.

Section 44 of Article III of the Constitution of Texas provides:

"The Legislature shall provide by law for the compensation of all officers,

servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law." (Emphasis added).

This provision has been construed by the Courts of this State to mean that the Legislature cannot appropriate State money to any individual "unless, at the very time appropriation is made there is already in force some valid law constituting the claim the appropriation is made to pay a legal and valid obligation of the state." Austin National Bank v. Sheppard, 123 Tex. 272, 71 S.W.2d 242 (1934). See also Corsicana Cotton Mills v. Sheppard, 123 Tex. 352, 71 S.W. 2d 247 (1934); Fort Worth Cavalry Club v. Sheppard, 125 Tex. 339, 83 S.W.2d 660 (1935); State v. Steck Company, 236 S.W. 2d 866 (Tex.Civ.App. 1951, error ref.).

In view of the foregoing, Senate Bill 279, approved by the Governor May 3rd, 1963, cannot be pre-existing law for an appropriation contained in the current Appropriation Act which was enacted August 8th, 1961. Furthermore, the language of Item 9 in the appropriation ending August 31, 1963, limits the expenditure for the purchase of medals and awards currently authorized by statute, resolution or orders by the Adjutant General, which does not include legislation subsequent to the enactment of the Appropriation Bill. Therefore, any awards, decorations or medals purchased pursuant to the authority contained in Senate Bill 279 cannot be paid out of Item 9 of the appropriation to the Adjutant General in Senate Bill 1, Acts of the 57th Legislature, First Called Session, Chapter 62, page 203, at page 252. Any medals purchased pursuant to Article 5793 prior to the effective date of Senate Bill 279 may be purchased out of such appropriation. Attorney General's Opinion No. WW-1330.

#### SUMMARY

Senate Bill 279, approved by the

Hon. Thomas S. Bishop, page 4 (C-85)

Governor May 3rd, 1963, is not pre-existing law for the expenditure of monies appropriated in Senate Bill 1, Acts of the 57th Legislature, First Called Session, Chapter 62, page 203, enacted August 8th, 1961. Austin National Bank v. Sheppard, 123 Tex. 272, 71 S.W.2d 242 (1934).

Yours very truly,

WAGGONER CARR  
Attorney General

By

  
John Reeves  
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE  
W. V. Geppert, Chairman

Cecil Rotsch  
Pat Bailey  
W. O. Shultz

APPROVED FOR THE ATTORNEY GENERAL  
By: Stanton Stone