



THE ATTORNEY GENERAL OF TEXAS

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JOHN L. HILL
ATTORNEY GENERAL

May 19, 1975

The Honorable John R. Bigham, Chairman
Environmental Affairs Committee
House of Representatives
Capitol Building
Austin, Texas

Opinion No. H- 608

Re: State funds which may
be used by the Parks and
Wildlife Department for the
construction of a headquarters
building at McKinney Falls
State Park.

Dear Representative Bigham:

You have requested our opinion concerning the funds to be used for the construction of a Parks and Wildlife headquarters building at McKinney Falls State Park. You ask:

- (1) Which state funds may be used by the Parks and Wildlife Department in constructing its new state headquarters on a portion of McKinney Falls State Recreation Park?
- (2) Is the erection of such a building a proper "capital outlay" or other proper use of funds described in article 4386b-2, V. T. C. S. ?
- (3) Is the erection of such a building a proper use of Texas Parks Fund No. 31?

Your attention is directed to the Parks and Wildlife Department's appropriation in the General Appropriations Act for the 1973-75 biennium, House Bill 139, 63rd Leg., Regular Session, 1973. In a rider attached to the regular appropriations provisions for the Department, the Act provides for an appropriation of:

. . . the unexpended balance of appropriations made to the Parks and Wildlife Department for construction of a State office building as provided in the General Appropriations made by the Sixty-Second Legislature . . . for the same purposes and subject to the same restrictions for the biennium beginning September 1, 1973.

The current appropriation therefore appropriates the unexpended balance of the appropriation made in the previous biennium, for the same purpose and subject to the same restrictions.

The previous appropriation, found in Senate Bill 11, Acts 62nd Leg., Regular Session, 1971, as amended by Senate Bill 7, Acts 62nd Leg., 1st Called Session, 1971, was likewise in the form of a rider to the Department's regular appropriations 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 recreation planning. Such amount to cover planning, site development, professional services and fees, salaries and wages, capital outlay including utilities, equipment, park areas and other improvements related thereto and all other necessary costs and expenses whether by contract or direct payments.

The current appropriation is made subject to the same restrictions as the original appropriation, and the original appropriation was not limited to any specific funds but was limited to a total amount not to exceed \$8,000,000. Therefore, the answer to your first question is that the current appropriation subject to the "amount" limitation of the original appropriation, would permit the use of the unexpended balances remaining at the conclusion of the 1971-73 biennium in such funds as may have been available to the Parks and Wildlife Department. The current Appropriation Act rider does not, in our opinion, appropriate additional money for such purposes. It merely reappropriates funds on hand but unspent during the previous biennium. See Attorney General Opinions WW-280 (1957), WW-23 (1957) and V-1117 (1950).

In answer to your second question, Attorney General Opinion M-952 (1971) held that the funds available to the Department under the re-appropriation may be transferred to the Operating Fund and expended for the construction of the building in question pursuant to article 4386b-2, V. T. C. S. See Attorney General Opinion M-574 (1970).

Your third question refers specifically to Texas Parks Fund No. 31. This fund was created by Acts 1971, 62nd Leg., ch. 292, p. 1200 amending article 7.06, V. T. C. S. Tax-Gen.

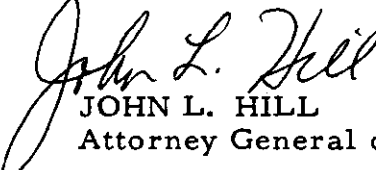
Fifty cents of the tax levied under this Article on each 1,000 cigarettes shall be credited to a new special fund known as the Texas Parks Fund which may be used by the Parks and Wildlife Department for the acquisition, planning, and development of state parks and historic sites. . . .
(Emphasis added).

In Attorney General Opinion H-575 (1975) we said "to the extent that the operational expenses of the Department are referable and allocable to the acquisition, planning, or development of state parks and historic sites, they may be financed from Texas Parks Fund 31." Likewise, the use of Parks Fund 31 is appropriate in the construction of a Parks and Wildlife Headquarters building at McKinney Falls State Park, but only to the extent that the building is related to or will be used in the acquisition, planning, and development of state parks and historic sites. See Attorney General Opinion M-952 (1971). What proportion of the building is allocable to those purposes is a question of fact.

SUMMARY


The current appropriation of unexpended balances to the Parks and Wildlife Department for construction of a State office building at McKinney Falls State Park is referable to the previous appropriation therefor; it authorizes expenditures of balances remaining at the close of the previous biennium in the funds from which expenditures were previously authorized.

Very truly yours,



JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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