



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. J. E. McDonald, Commissioner
Department of Agriculture
Austin, Texas

Dear Sir:

Opinion No. O-1220

Re: Would the Department of Agriculture still have authority to use the fees provided for in H.B. 12 for the purposes provided for in the appropriation bill in spite of the Governor's veto thereof?

We are in receipt of your letter of August 2, 1939, in which you call our attention to the following situation and request an opinion in respect thereto:

"House Bill No. 12, Acts of the First Called Session of the Forty-fifth Legislature, provides that lease fees received from the placement of State owned Jacks and Stallions be placed in the Treasury where it is set up as a Special Fund for the administration of the Jack and Stallion work.

"The recent Legislature in the Departmental Appropriation Bill, set up and itemized the following:

"Bookkeeper	\$1,400.00
Inspector	1,800.00
Rent, lights, heat, contingent, etc	1,950.00
Travel expense	3,000.00

for each of the fiscal years ending August 31, 1940 and August 31, 1941.

"The Governor vetoed the \$1,500.00 item and the \$3,000.00 item.

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"Please advise whether or not the Legislature or the Governor of the State has the authority to disregard the provisions of said House Bill No. 12, and if either the Legislature or the Governor has presumed to change the provisions of House Bill No. 12, their act will stand in opposition to the provisions of said bill.

"To be more direct, since the Legislature set up these items in accordance with the terms of the law, would this Department still have the authority to use the fees for the purposes provided for in the Appropriation Bill in spite of the Governor's veto thereof?"

House Bill No. 12, ch. 23, p. 1794, General & Special Laws, Forty-fifth Legislature, First and Second Called Sessions, 1937, is quoted in full as follows:

"Sec. 1. From and after the date of September 1, 1937, the Commissioner of Agriculture of the State of Texas is hereby directed and authorized to distribute throughout the State of Texas, on a lease basis as hereinafter provided, the jacks and stallions purchased by the State of Texas under the terms and provisions of Acts of the Regular Session, Forty-third Legislature, chapter 163, Page 433, as amended by Acts of the Forty-third Legislature, First Called Session, Chapter 10, Page 32, And said Commissioner of Agriculture is further directed and authorized to name some suitable person, experienced in the handling of jacks and stallions, as caretaker of such jack or stallions. The Commission of Agriculture shall adopt and carry out reasonable rules and regulations with respect to the leasing and distribution, care, use and maintenance of such animals. Provided further that the title of all such jacks and stallions hereinbefore mentioned shall be and remain in the State of Texas. Provided further that in the event the Commissioner of Agriculture is unable to place any of such

animals as herein provided due in any manner to defects or unfitness for breeding purposes, then the Commissioner of Agriculture is hereby authorized and directed to turn such animals over to the State Board of Control, who shall dispose of same to the best interest of the State.

"Before any of the jacks or stallions are leased and distributed as herein provided, the Commissioner of Agriculture shall allocate and tender to the Texas Prison System two jacks and one stallion and after said jacks and stallion have been accepted by the Texas Prison Board, the Commissioner of Agriculture shall thereafter exercise no control or management over such animals. Such animals shall thereafter remain and be the property of the Texas Prison System for its use and purposes, and said jacks and stallion are to be selected by the Commissioner of Agriculture and General Manager of the Texas Prison System from those jacks and stallions now owned by the State of Texas under the provisions of Chapter 10, Acts of the First Called Session, Forty-third Legislature. And all expenses incurred by the Commissioner of Agriculture in delivering said jacks and stallion to the Texas Prison System shall be borne by said system.

"Sec. 2. From and after the effective date of this Act the Commissioner of Agriculture shall distribute the jacks and stallions aforesaid throughout the State of Texas where there is most need shown to competent and capable caretakers who shall agree and pay to the State of Texas the sum of Thirty Dollars (\$30) in advance as an annual rental for the use of such jack or stallion, as the case may be, and who shall first enter into a written contract with the Commissioner of Agriculture all such conditions and terms as may be determined by the Commissioner. In addition thereto each keeper shall be required

to enter into a bond with two or more good and sufficient sureties, payable to the State of Texas, upon the approval of the Commissioner of Agriculture, conditioned that such caretaker shall in good faith, feed, water, care for and properly handle such animals. Such bond to be in the sum of not less than the market value of said animal or animals as determined by the Commissioner of Agriculture.

"The Commissioner of Agriculture is hereby directed to contract with such keepers or caretakers to terminate on July 1 of each year such contracts to be terminable before that time when in the opinion of the Commissioner of Agriculture, or his agents, such animals are not being properly cared for as provided in the terms of such contracts and no lease shall extend for a period to exceed one year.

"The contract hereinabove provided for shall in addition to the provisions herein set forth include one which will permit the use of such jack or stallion by said caretaker for the purposes for which he may be assigned in said contract and in no event shall the keeper or caretaker make a service charge of more than Ten Dollars (\$10) for each foal and such caretaker or keeper shall personally be liable for all refunds in guaranteeing a foal and in no event shall the State of Texas be liable directly or indirectly therefor. And it is expressly provided that the Thirty Dollars (\$30) paid as herein provided shall be all the demand or claim that the State of Texas shall have against such keeper or caretaker for rendering the services herein provided and the sum or sums herein provided as a charge for breeding fees shall be the only compensation said keeper or caretaker may claim of or from the State of Texas therefor.

"Sec. 3. The money derived from the leasing of the animals hereinabove mentioned shall be deposited by the Commissioner of Agriculture

in the State Treasury where it shall be set up as a 'Special Jack and Stallion Fund' to be used by the Commissioner to pay the salaries of two (2) competent supervisors at not to exceed Eighteen Hundred Dollars (\$1800) per year each for salaries and who shall receive the actual and necessary traveling expenses while away from Austin in the performance of their duties, which expenses shall not exceed amounts allowed other state employees under the terms and provisions of Senate Bill 138, Acts of the Forty-fifth Legislature, Regular Session, 1937, and in no event shall the salaries and expenses herein authorized exceed the amount collected annually from the lease or hire of animals as herein provided.

Sec. 4. All moneys now on hand and accruing to the Jack and Stallion Account under H.B. 779, Acts of the Forty-fourth Legislature, Regular Session, and amended by H. B. 8, Chapter 495, Forty-fourth Legislature, Third Called Session, are hereby transferred to the Special Jack and Stallion Fund to be used by the Commissioner of Agriculture for making refunds on breedings heretofore reported in conformity with refunding provisions of H.B. 779, Acts of the Regular Session of the Forty-fourth Legislature, and for the payment of all other expenses incurred in the administration of this Act, subject to the biennial appropriation for the year ending August 31, 1939. The State Comptroller and the State Treasurer are hereby authorized and directed to make such transfers. (Underscoring ours).

"After transferring from said Special Racing Fund the said twenty-five per cent (25%) going to the State Available School Fund and after transferring from said Special Racing Fund all moneys on hand and accruing to the Special Jack and Stallion Fund, the balance then remaining in said Special Racing Fund until it becomes exhausted, shall be used for the payment of the appropriations by the Legislature for the support and maintenance of the State Department of

Agriculture as said appropriations for the Department shall be fixed and allowed by the Legislature of the State of Texas from time to time. It is the intent of the Legislature hereby that the above distribution shall immediately be made and the money so transferred shall be come available now and for any and all appropriations made by the Regular Session of the Forty-fifth Legislature for the support and maintenance of the State Department of Agriculture and that the General Revenue Fund shall not be drawn on until all moneys in the Special Racing Fund shall be come exhausted, and all unexpended balances remaining on hand, at the end of the current biennium ending August 31, 1937, shall be carried over in the succeeding biennium to the use and benefit of the said State Department of Agriculture, as provided by law; providing however, that no refunds of breeding fees shall extend beyond January 1, 1938. (Underscoring ours).

"Sec. 5. The fact that a Special Session of the Forty-fifth Legislature is now in session to consider the provisions set forth hereinabove created an emergency and an imperative public necessity that the Constitutional Rule providing a bill to be read on three several days in each House be suspended, and said Rule is hereby suspended, and that this Act shall have effect and be in force from and after its passage, and it is so enacted."

Senate Bill No. 427, Forty-sixth Legislature, the General Departmental Appropriation Bill, under Agriculture Department, provides, in part:

" . . . JACK AND STALLION DIVISION . . .
64. Salaries and expenses in the Special Jack-Stallion Fund, H.B. No. 12, First Called Session, Forty-fifth Legislature.

For the years ending . . . August 31, August 31,
1940 1941

(Continued) -	<u>August 31,</u> <u>1940</u>	<u>August 31,</u> <u>1941</u>
64a. Bookkeeper	\$ 1,500.00	\$ 1,500.00
64b. Inspector	\$ 1,800.00	\$ 1,800.00
64c. Rent, heat, light, postage, printing, telephone, supplies and contingent, etc.	\$ 1,950.00	\$ 1,950.00
64d. Travel Expense	\$ 3,000.00	\$ 3,000.00"

Exercising the veto power conferred upon him by Section 14, Article IV of the Constitution of the State of Texas, the Governor objected to and struck out items 64a (Bookkeeper) and 64d (Travel Expense).

Section 3 of H.B. No. 12 of the Forty-fifth Legislature, First Called Session, above quoted, provided for two (2) inspectors and for "actual and necessary traveling expenses while away from Austin in the performance of their duties, etc." for said inspectors or supervisors.

It will be noted from an examination of the Appropriation Bill that the Forty-sixth Legislature appropriated a salary for only one supervisor, and the Governor later eliminated the position of bookkeeper and the traveling expense fund.

The failure of the Forty-sixth Legislature to make an itemized appropriation for a salary for the other inspector and the veto of the Governor of the expense item and the item of a bookkeeper do not repeal the terms and provisions of H. B. No. 12, supra.

39 TEX. JUR. 130

"Generally speaking the Legislature may repeal any statute at will. But it has been observed that the Constitution does not authorize the repeal of a statute through the medium of a

general appropriation bill."

CONLEY vs. DAUGHTERS OF THE REPUBLIC, 151 S.W. 877, reversed on other points 156 S.W. 197, rehearing overruled 157 S.W. 937

"It was never contemplated that an Act be repealed by an item in an appropriation bill
* * *

But while there has been no repeal of H.B. No. 12, it is evident from a consideration of the General Departmental Appropriation Bill before and after the Governor's veto of certain items therein, that there has been no itemized appropriation of money for the salary of a second inspector.

The effect of the failure of the appropriation is that H. B. 12 authorizes the Commissioner to appoint two (2) inspectors, but there is a specific appropriation for the salary of only one of them.

Moreover, the Governor, through the exercise of his veto power, has stricken out of the appropriation for the Jack and Stallion Division of the Department of Agriculture items 64a (Bookkeeper) and 64d (Travel Expense).

There is no question as to the power of the Governor to veto specific items in the General Departmental Appropriation Bill.

ARTICLE 4, SECTION 14, OF THE CONSTITUTION OF THE STATE OF TEXAS

* * * If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect. * * *

Full effect, however, must be given to the pro-

visions and riders of Senate Bill No. 427, insofar as they relate to the appropriation for the Jack-Stallion Division of the Department of Agriculture for the biennium August 31, 1939, to August 31, 1941.

In Senate Bill No. 427, the appropriation Bill under consideration, in addition to the four listed items under the heading, Special Jack-Stallion Fund, (two of which were struck out by the Governor), there are two other pertinent provisions relating to H. B. No. 12, First Called Session, Forty-fifth Legislature:

"In view of the fact that fees collected under H. B. 12, Acts of the First Called Session of the Forty-Fifth Legislature are received during the months of July and August, all balances on hand in this fund at the end of the fiscal years, August 31, 1939 and August 31, 1940, are hereby reappropriated for the enforcement of this Act."

"For each of the fiscal years ending August 31, 1940, and August 31, 1941, all fees and/or unexpended balances which have been received and which may be received by virtue of Chapter 7, Article 153, Revised Civil Statutes, 1925; Chapter 3 of Title 4, Revised Civil Statutes, 1925; Article 5764, Revised Civil Statutes, 1925; Article 5695, Revised Civil Statutes, 1925; Chapter 287, Regular Session, Forty-second Legislature; Chapter 304, Regular Session Forty-first Legislature and House Bill No. 12, First Called Session, Forty-fifth Legislature and any amendments to any of said acts are hereby appropriated, after they shall have been deposited in the State Treasury, to the Department of Agriculture to be used by said Department for the enforcement of the abovementioned Acts and for the operation and maintenance of said activities as hereinabove specifically itemized and in no event shall any of these fees be used otherwise." (Underscoring ours).

It is provided in the general rider to S. B.

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427 that "all surplus fees, receipts, special funds, or other available funds on hand at the end of each year of the biennium shall revert to the General Revenue Fund of the State unless otherwise prohibited by law or otherwise provided herein." The above quoted special riders indicate that the General Departmental Appropriation Bill specifies that the Special Jack-Stallion Fund shall not revert to the General Revenue Fund at the end of each year.

It is evident that there are really two appropriations for the Jack-Stallion Division of the Department of Agriculture, First, the itemized appropriation and the appropriation of "all fees and/or unexpended balances". The latter are appropriated "for the enforcement" of H. B. 12 and "for the operation and maintenance of said activities as hereinabove specifically itemized and in no event shall any of these fees be used otherwise".

The Governor in vetoing two items from the specific appropriation did not in any way disturb the appropriation of "all fees and/or unexpended balances". It was evidently the intention of the Legislature and the Governor that the balance of the money in the Special Jack-Stallion Fund be used for purposes necessary to the enforcement of the Act, as well as "for the operation and maintenance of said activities" as are "specifically itemized" in the appropriation for the Jack Stallion Division.

The next question which presents itself for consideration in view of the lump sum appropriation of the balance of the Jack Stallion Fund for carrying out the provisions of the Jack Stallion Act, H.B. No. 12, Forty-fifth Legislature, is whether or not the approval of the Board consisting of the Governor, the Attorney General and the State Treasurer must be obtained before the Jack Stallion Division may expend any of the appropriated balance in said fund for the purposes essential to the carrying out of the functions of the division.

This Board and its jurisdictions are provided for in the "Limitation of Payments" clause in the general

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rider (Section 2) to the General Departmental Appropriation Bill, Senate Bill No. 427 of the Forty-sixth Legislature. It reads as follows:

"Limitation of Payments. Except as otherwise provided, whenever, by virtue of the provisions of this Act, items are to be paid out of fees, receipts, special funds or out of other funds available for use by a department, it is the intention of the Legislature to limit expenditures out of said fees, receipts, special funds or other available funds to the purposes and in the amounts itemized herein, and it is so provided. If, however, the amount of the fees, receipts, special or other available funds herein referred to are more than sufficient to pay the items herein designated to be paid therefrom, the department to which the said fees, receipts, special funds or other available funds are appropriated may, if necessary to adequately perform the functions of said department, use any portion of said surplus fees, receipts, special funds or other available funds; provided, however, that before doing so the head of such department shall, under oath, make application, jointly, to the Governor, the Attorney General and the State Treasurer setting forth in detail the necessity for using such surplus fees, receipts, special funds or other available funds and itemizing the purposes for which the same are to be used. Unless the application is approved by at least two of the three persons aforementioned, the surplus fees, receipts, special funds or other available funds shall not be expended. Any item set out in the application can be deleted by decision of a majority of the three persons aforementioned. All applications which are approved or denied must be signed by those voting to approve or deny same. Said applications, after approval or rejection, shall be filed with and retained by the State Auditor for a period of six months after the expiration of the biennium ending

August 31, 1941, and shall remain open to public inspection during said period. All surplus fees, receipts, special funds, or other available funds on hand at the end of each year of the biennium shall revert to the General Revenue Fund of this State unless otherwise prohibited by law, or unless otherwise provided here in. No salary paid additional employees shall exceed the amount herein appropriated for similar positions. All disbursements shall be made on warrants issued by the Comptroller on the State Treasury."

The above question is answered in the negative on the authority of conference opinion No. O-1321 of this department by Hon. Richard W. Fairchild, Assistant Attorney General. In this opinion the "Limitation of Payments" Clause is exhaustively analyzed, its constitutionality upheld, and the Board's authority defined as relating only to surpluses in funds dedicated or devoted to a department's use and benefit, but not appropriated to said department elsewhere than in the "Limitation of Payments" Clause.

Opinion No. O-1321 states that in the General Departmental Appropriation Bill, i.e., Senate Bill No. 427 of the Forty-sixth Legislature "There are two separate and distinct classes of appropriations made from fees, receipts, and special funds".

These two separate and distinct classes are described in language upon which we cannot improve in the following paragraph of the opinion:

"We are thus confronted with the problem of whether the Legislature intended the "limitation of Payments" Clause to apply only to those instances where it has by the special rider appended to the particular departmental appropriation, appropriated the surplus in the special fund to the use and benefit of the particular department, or, on the other hand, were the words "except as otherwise provided" intended to eliminate these specific appropriations of the surplus from the application of the "Limitation of

Payments" clause, and was the clause, therefore, intended as a conditional appropriation of those surpluses which might exist in special funds, in instances where the Legislature had, by rider to the particular departmental appropriation, made no effort to place such surpluses at the disposal of the particular department?"

It will be observed that the surplus in the Jack-Stallion Fund created under House Bill No. 12 of the Forty-fifth Legislature falls within the first classification since it is appropriated to the use and benefit of the Jack Stallion Division by the special rider appended to the Department of Agriculture appropriation.

The question as to whether the "Limitation of Payments" clause applies to this class of surplus is answered in opinion No. 0-1321 as follows:

** * * It would seem to be manifest that the Legislature did not intend that the 'Limitation of Payments' clause should apply to such surpluses as were definitely appropriated by the Legislature to the use of a particular department by special rider to the departmental appropriation. To hold otherwise, would be to say that the Legislature intended to create an absurd and mischievous situation calculative to impair materially the functions of State Government, and to result in great inconvenience in its administration."

It is, therefore, our opinion that the balance of the Jack-Stallion Fund appropriated in a lump sum to the benefit and use of the Department of Agriculture is not subject to the "Limitation of Payments" clause and the Jack Stallion Division is not obliged to obtain the approval of the "Limitation of Payments" Board to legitimate expenditures of moneys in said surpluses.

The final question to be answered is; for what purposes are the moneys in the itemized lump sum appropriation, consisting of a surplus in the Jack Stallion Fund, unavailable?

In the first place, the balance of the fund cannot be used for supplementing the specific items for which a definite sum has been appropriated, i. e., item 64-b (an inspector at estimated salary of \$1800) and 64-c (rent, heat, light, postage, telephone, printing supplies and contingent \$1950. annually). An express prohibition to this effect is contained in the section of the General Rider to the Departmental Appropriation Bill headed "Salary and Other Provisions" as follows:

"(b) The appropriations herein provided 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 source; and, except as otherwise provided, no other expenditures shall be made, nor shall any other obligations be incurred by any department of this State, provided however that nothing herein shall prevent any department head from paying less than the maximum amount set forth herein for any salaried positions."

Secondly, any portion of the surplus may not be used for "traveling expense". Such expenditure is prohibited in the General Rider under "Traveling Expense", as follows:

"(a) It is provided that no expenditure shall be made for traveling expenses by any department of this State in excess of the amount of money itemized herein for said purpose.* * *

Item 64-d - "Traveling Expense" - under the Jack Stallion itemized appropriation in the General Departmental Appropriation Bill has been vetoed by the Governor. Giving effect to this veto, we have the same situation as if the Legislature had made no appropriation for traveling expenses for the Jack Stallion Division. The above quoted provision of the General Rider to the Departmental Appropriation Bill is an absolute

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prohibition against the expenditure of a greater amount than that specifically allowed which amount in this instance is nil. For reasoning which will support this construction see opinion No. O-1139 of this department by Hon. Cecil Cammack, Assistant Attorney General.

In conclusion in answer to your specific inquiry, it is our opinion that the effect of the Governor's veto is to eliminate the specific items 64-a (Bookkeeper) and 64-d (Travel expense) under the special Jack Stallion Fund from the General Departmental Appropriation Bill, i.e., Senate Bill 427 of the Forty-sixth Legislature; but that the lump sum appropriation in the special rider of "any fees and/or balances" of the Jack Stallion Special Fund, which was not vetoed by the Governor, would be available to the Jack-Stallion Division of the Department of Agriculture for the employment of necessary personnel and the payment of such salaries and other expenses as are incurred in the enforcement of the provision of the Jack-Stallion Act, H. B. No. 12 of the Forty-fifth Legislature, with the express exception of traveling expenses and the supplementing of funds for specific items.

Trusting that the above fully answers the inquiry in your letter, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed) Dick Stout
Dick Stout
Assistant

DS:OB

APPROVED Aug. 31, 1939
(Signed) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION COMMITTEE
BY B. W. B.
CHAIRMAN