



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. Charles E. Baughman  
Chief Clerk,  
Department of Agriculture  
Austin, Texas

Dear Sir:

Opinion No. O-1687

Re: Use by the Department of  
Agriculture during the cur-  
rent biennium of fees accru-  
ing to the administration  
of certain Acts.

By your letter of November 9, 1939, you contend that your department is entitled, under the provisions of S. B. 427 passed by the 46th Legislature, to use Nursery Inspection fees, Charter Filing Fees, Inspection Fees from public weighers, as well as annual lease fees derived under the provisions of H. B. No. 12, Acts of the first called session 46th Legislature, for expenses incurred in the administration of the various Acts under which such fees are collected, other than the expenses for which a specific appropriation of such fees has been provided by the Legislature. It seems that you desire to use these fees to pay traveling expenses incident to the administration of the various Acts under which they are collected, because the Governor, in the exercise of his veto power, eliminated specific items appropriated by the Legislature for traveling expenses out of said fees for the administration of the particular Acts under which the fees were collected. Your question is, therefore, whether the traveling expenses incurred in the administration of these various Acts may yet be paid out of said fees "regardless of the fact that the Governor undertook to veto every traveling expense item appearing in any and all of the above mentioned items."

There is not involved in your inquiry the question upon which this department has already ruled concerning the right of a department to pay traveling expenses out of an

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item specifically appropriated for "contingent" expenses in the situation where no specific provision has been made by itemization for traveling expenses.

We quote the following from the appropriation made in S. B. 427 for the Department of Agriculture:

*20. Salary and other expenses in the Nursery Inspection Fee Fund, Ch. 7, Art. 153, R.C.S. of 1925.	
*20a. Stonographer, seasonal, \$122.50..	\$ 300.00
*20b. Inspector	1800.00
*20c. Inspector	1800.00
*20d. Inspector, seasonal, at \$150.00 per month	750.00
*20e. Inspector, seasonal, at \$150.00 per month	750.00
*20f. Rent, heat, light, postage, tele- phone, telegraph, printing sup- plies and contingent	2035.00*
*35. Salaries and other expenses in the charter filing fee fund, Art. 5764, R.C.S., 1925.	
*35a. Bookkeeper	1500.00
*35b. Rent, heat, light, telephone, telegraph, printing supplies and contingent	500.00
*35c. Traveling expenses	1500.00*
(The Governor vetoed items 35a and 35c)	
*50. Salaries and other expenses in the weights and measures fee fund, Art. 5695, R.C.S., 1925, Ch. 257, reg. ses. 42d Legislature.	
*50a. Rent, heat, light, postage, tele-	

phone, telegraph, printing supplies and contingent	\$ 1500.00
*50b. Bookkeeper and office deputy	1500.00
*50c. Traveling expenses	3000.00*
(The Governor vetoed items 50b and 50c)	
*Jack and Stallion Division.	
*64. Salaries and expenses in the special Jack-Stallion Fund, R.S. 12, 1st. call. ses., 45th Legislature.	
*64a. Bookkeeper	1500.00
*64b. Inspector	1800.00
*64c. Rent, heat, light, postage, telephone, printing supplies and contingent	1950.00
*64d. Traveling expenses	3000.00*
(The Governor vetoed items 64a and 64d)	

The special rider appended to the appropriation for the Department of Agriculture reads in part as follows:

\*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 Article 133, Chapter 7, Revised Civil Statutes, 1925; Chapter 3, Title 4, Revised Civil Statutes, 1925; Article 5784, Revised Civil Statutes, 1925; Article 5895, 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 credit of the State Department of Agriculture to be used by said Department for the enforcement of the above

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mentioned Acts and for the operation and maintenance of said activities as hereinbefore specifically itemized and in no event shall any of these fees be used otherwise."

Item "20", item "35", item "50" and item "64" are not in truth and in fact items of appropriation in and of themselves, but were intended by the Legislature to be merely descriptive of the general character of the specific "items of appropriation" given the same numeral and followed by the letters a, b, d, e, etc., immediately following the original numeral. In other words, the term "20. Salary and other expenses in the Nursery Inspection Fee Fund, Ch. 7, Art. 153, R. C. S., 1925", is but descriptive of appropriations subsequently made immediately following such phrase for a subdivision of the Horticultural Inspection and Quarantine Division of the Agricultural Department, just as the phrase "Horticultural Inspection and Quarantine Division", immediately preceding various items of appropriation, is descriptive of the general character of appropriations made to that division of the Agricultural Department.

The special rider quoted in your letter, also quoted above, does not purport to make these fees available to the Department of Agriculture generally to be used for the enforcement of the Acts under which they are collected and for the operation and maintenance of such activities, but appropriates said fees restrictively, with the limitation that they may be used by the Department of Agriculture for the operation and maintenance of said activities and the enforcement of the Acts under which they are collected "as hereinabove specifically itemized and in no event shall any of these fees be used otherwise." It follows that these fees are not available to the Department generally, but are available only to defray the items of expense to which they are appropriated as specifically itemized in the Act as it appeared when it became the law of the State of Texas, which was not until it had been approved by the Governor. The Governor's veto of such specific items indicated above was fully effective to eliminate these items from the appropriation bill, and therefore to limit the authority to expend these funds accordingly.

It follows from what we have said above that your question must be answered in the negative.

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Very truly yours  
ATTORNEY GENERAL OF TEXAS

By *R. W. Fairchild*  
R. W. Fairchild  
Assistant

RWF-MR

APPROVED DEC 9, 1939

*Gerald B. Mann*  
ATTORNEY GENERAL OF TEXAS

