



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Fred Mauritz, Chairman
Claims & Accounts Committee
The Senate
Austin, Texas

Dear Senator Mauritz: Opinion No. 0-5188

Re: Authority of the Legislature to
make an appropriation of \$10,000
to pay Mr. Cerracchio toward the
erection of a monument to Sam
Houston.

Your letter of request for an opinion in connection
with the above subject matter is as follows:

* * * *

"The 38th Legislature by Chapter 49, Page
105 General Laws, Second Called Session appro-
priated \$25,000 towards the erection of a monu-
ment to honor Sam Houston. The appropriation
provided it should be available when as much as
\$50,000 had been raised from other sources to
be expended for said purpose. The bill also
provided for a committee to represent the state
in spending the money. We request that you
read this bill in connection with the herein-
after stated facts and assumptions and the ques-
tion to follow.

"The Committee was formed pursuant to the
Act and a contract entered into with Enrico Cer-
racchio whose contract is attached.

"I am informed that \$10,000 of the \$50,000
which was to be raised from outside sources was
never raised and was not paid to Cerracchio, but
that Cerracchio gave a receipt in full in order
to prevent the \$25,000 state appropriation from
lapsing and that the state appropriation was then
expended.

"I am also informed that Cerracchio was assured that the remaining money owing to him would be raised but that this has never been done.

"Assuming the above facts to be correct does the Legislature have authority to make an appropriation to pay Mr. Cerracchio the \$10,000 which was to be paid to him but which was not raised or paid to him from 'other sources?'"

You are respectfully advised that it is the opinion of this department the Legislature would have no authority to make an appropriation in payment of Mr. Cerracchio's claim.

Chapter 49, Senate Bill No. 79, of the 38th Legislature, referred to by you, is as follows:

"SECTION 1. There is hereby appropriated out the State Treasury the sum of twenty-five thousand dollars (\$25,000.00) to be used as provided herein in the erection of a monument in the City of Houston in memory of Sam Houston, the patriot, military general, president and governor of the Republic of Texas and the State of Texas.

"SEC. 2. That said sum of twenty-five thousand (\$25,000.00) dollars shall be available for the purpose of erecting said monument only when as much as fifty thousand (\$50,000.00) dollars shall have been raised and expended from other sources for said purpose, making a total of not less than seventy-five thousand (75,000.00) dollars to be paid for said monument.

"The Governor is hereby authorized to appoint a committee of such numbers as he shall determine, which committee shall have the power to appoint a sub-committee of not less than five (5) members, which committee or sub-committee shall have submitted to it for its approval the design, plan, specifications, contract and location of the monument.

"All contracts shall be between the contractor on the one hand and the State of Texas by and through the committee appointed by the Governor or the sub-committee thereof, and the committee in charge of raising funds from other sources, on the other hand.

"The contract shall be signed by all members of the committee for the State or sub-committee and by the duly authorized persons in charge of the collection of funds from other sources.

"It is requested if practicable that there be inscribed and engraved on the base of the monument the names of all the officers and soldiers participating in the Battle of San Jacinto and also a brief history of the campaign relating to the surrender of Santa Anna.

"It is also requested if practicable, that the monument be constructed from minerals, stone or other materials from the State of Texas, and that the architecture, plan and design, sculptor and others employed, be native citizens of the State of Texas:

"The appropriation herein made shall be available for two years from the first day of September, A. D. 1923, but shall not be paid out until the performance of said contract and the acceptance of the monument by both committees; and shall then be paid out on sworn account approved by the said committee appointed by the Governor and also on approval of the account by the Governor."

Section 44 of Article III of the Constitution provides:

"The Legislature shall provide by law 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; * * *."

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There is no pre-existing law, other than Chapter 49 above quoted, that possibly could authorize the appropriation to pay the claim of Mr. Cerracchio. This Act not only does not authorize the appropriation, but on the contrary, it very definitely limits the liability of the State to the specific sum of \$25,000.00 therein authorized, and which, under your statement, has been fully paid.

Similar rulings have been made in the following instances by this department: Opinions Nos. 0-226; 0-669; 0-1013; 0-1203; Conference Opinion 3012; 0-693; 0-1750, and 0-2747. See, also:

Austin National Bank v. Sheppard, Comptroller, 71 S. W. (2) 242; Corsicana Cotton Mills v. Sheppard, Comptroller, 71 S. W. (2) 247; State v. Perlstein, 79 S. W. (2) 143; Fort Worth Cavalry Club v. Sheppard, Comptroller, 83 S. W. (2) 660; State v. Ragland Clinic Hospital, 159 S. W. (2) 105.

Your question, therefore, is answered as above indicated.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Ocie Speer
Assistant

OS-MR

APPROVED APR 13, 1943
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN

OS:gm