



**THE ATTORNEY GENERAL  
OF TEXAS**

**JE DANIEL  
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**AUSTIN, TEXAS**

V-887  
V-885

October 6, 1949

Hon. J. E. McDonald  
Commissioner of Agriculture  
State Land Office Bldg.  
Austin, Texas

Opinion No. V-923.

Re: Construction of Section 11, House Bill No.35, Acts 51st Legislature.

Dear Sir:

Reference is made to your request for an opinion as to the availability of the fees collected by the Commissioner of Agriculture in accordance with the provisions of Section 11, House Bill No.35, Acts 51st Legislature, page 1127, for the purposes stated therein.

Section 1 of House Bill No.35 reads as follows:

"There is hereby established in this State the following procedure for vegetable plant certification:

"The purpose of the vegetable plant certification law is to provide for the purchaser of vegetable plants the benefit of honest and reliable opinion of the freedom from such diseases and fungus infection as can be determined by field inspection prior to preparing the plants for shipment to insure in so far as possible, proper handling and packaging the plants certified.

"The Commissioner of Agriculture is charged with the duties of prescribing such rules and regulations as are necessary to the enforcement of the law. The appointment of qualified inspectors, collection of fees, issuance of tags and the actual enforcement of the law.

"The firm or individual holding such license and meeting the requirement of inspection are issued such certification stamps or tags as may be deemed necessary, such stamps or tags to be affixed to containers carrying the certified plants."

Hon. J. E. McDonald, page 2 (V-923)

Sections 10 and 11, read, respectively, as follows:

"Sec. 10. Inspection fees shall be as follows for tomato, cabbage, broccoli, collards, cauliflower, pepper and onions:

"At the time of applying for the certification a minimum fee of Five Dollars (\$5) shall be paid, and for each acre over five (5) acres the fee shall be not less than twenty-five cents (25¢) nor more than One Dollar (\$1); this fee to be paid at the time of application. The certification tag or stamp to be affixed to the container shall be ten cents (10¢) per thousand plants contained.

"Sec. 11. (1) Application for certification of sweet potato plants shall be made prior to harvesting time the preceding season. The fee to be paid at the time the application is made for this inspection shall be a minimum of Five Dollars (\$5) and for acreage of more than five (5) acres the added fee of not less than twenty-five cents (25¢) per acre nor more than One Dollar (\$1) per acre shall be paid. All plants lifted or shipped shall be packaged in bundles of one hundred (100) plants and a label or tag shall be affixed to each bundle. The price of labels or tags shall not be less than one cent (1¢) per label nor more than three cents (3¢) per label.

"(2) All such fees as are collected under this Act shall be deposited in the State Treasury in a special fund under the title of the Texas Vegetable Certification fund. The purpose of the fees being to pay for the enforcement of the law and to provide inspections called for; it further being the purpose to make the law self-supporting.  
(Emphasis added)

"(3) Out of the fees collected under this Act, the Chief of the Markets and Warehouse Division of the Department of Agriculture shall be paid in addition to the amount

of his salary in the general appropriation bill in the sum of Four Hundred and Eighty Dollars (\$480) per annum; which amount is hereby appropriated for said purpose." (Numbering of paragraphs added)

Paragraph 3 of Section 11 clearly and definitely makes a specific appropriation of \$480 out of the fees collected for the purpose of supplementing the annual salary of the Chief of the Markets and Warehouse Division, as fixed in the general appropriation bill for the current biennium. Paragraph 2 of Section 11 does not contain the words "which amount is hereby appropriated for said purpose" found in paragraph 3. Therefore, we must determine from the entire Act whether it was the intent and purpose of the Legislature to appropriate the balance of the fees collected by the Department of Agriculture for the purposes mentioned in paragraph 2.

We quote from Attorney General's opinion No. V-887, as follows:

"Section 6, Article VIII of the Constitution of Texas, in part, reads:

"No money shall be drawn from the Treasury, but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer period than two years."

"In the case of Pickle v. State Comptroller, 91 Tex. 484, 44 S.W.480 (1898), Chief Justice Gaines, speaking for the Court, said:

"It is clear that an appropriation need not be made in the general appropriation bill. It is also true that no specific words are necessary in order to make an appropriation; and it may be conceded, that an appropriation may be made by implication when the language employed leads to the belief that such was the intent of the Legislature."

In 39 Texas Jurisprudence 205, Statutes, Section

110, it is said:

"It is elementary that a statute will be construed in such manner as to make it effective - that is, enforceable and operative - if it is fairly susceptible of such interpretation. Thus where two constructions might reasonably be given a statute, of which one will effectuate the legislative intent and purpose and make the act operative, while the other will defeat such intent and purpose and render it inoperative, the former construction will be adopted."

This law was enacted for the protection of purchasers of vegetable plants therein named by assuring them as far as possible that the plants are apparently free from diseases and pests "as determined from field inspection prior to the lifting of the plants for sale or shipment." It is a matter of common knowledge that the production of these plants is a large and growing industry in certain localities of this State. It is also a well known fact that many states have enacted statutes prohibiting the importation or sale of such plants grown in Texas, for the reason that this State has not heretofore had a law providing for their proper certification. By the enactment of this law, the Legislature intended to not only give the producer of such plants the protection therein provided, but to give the producer new fields in which to sell them.

If the Legislature has failed to make an appropriation of the fees collected for the purposes stated in paragraph 2, Section 11, it necessarily follows that the purposes of the law have failed. The appropriation specifically made by paragraph 3, Section 11, also fails, for the reasons no certification fees or fees for tags, stamps, or labels will be collected. You are not authorized to issue certification tags, stamps, or labels unless there has been a "field inspection prior to the lifting of the plants for sale." Such inspections cannot be made without qualified inspectors to make them. You cannot obtain such inspectors unless funds have been made available to pay them for their services. Therefore, if the Legislature has failed to appropriate the fees you are authorized to collect and expend for the purposes stated in the law, the law must remain ineffective and inoperative from October 5, 1949, until such time as the

Legislature appropriates such fees for the purpose of enforcing its provisions.

We do not believe the Legislature intended such a result. We think the Legislature intended to make the law operative and enforceable from its effective date and to make an appropriation of all fees collected for the purposes therein stated, and did make such appropriation. Such a construction is reasonable and neither violates the provisions of Section 6, Article VIII of the Constitution of Texas, nor any other provision of that document.

Furthermore, the Legislature evidently believed it had appropriated all the fees collected by the language used in paragraph 2, Section 11, or it would not have in plain language made the appropriations in paragraph 3 of the same section. Otherwise, it would be apparent that the Legislature had intentionally done a useless thing by appropriating fees which it knew could not be collected without an appropriation to enable you to collect them.

Therefore, it is our opinion that Section 11 of House Bill No. 35, Acts 51st Legislature, Chapter 581, page 1127, constitutes a valid appropriation of the fees which the Commissioner of Agriculture is authorized to collect thereunder, for the purposes therein stated, for a period of years, beginning October 5, 1949, the day it becomes effective, and ending October 4, 1951.

SUMMARY

House Bill No. 35, Acts 51st Legislature, made a valid appropriation of all the fees collected thereunder by the Commissioner of Agriculture for the purposes stated therein for a period of two years, beginning October 5, 1949, the effective date of the Act, and ending October 4, 1951. A.G. Opinions Nos. V-887, V-895 and authorities there cited.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED

*Price Daniel*  
ATTORNEY GENERAL

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By *Bruce W. Bryant*  
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Assistant