



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

November 22, 1971

Reviewed by *M-1101*  
*W. H. ...*

Dr. George J. Beto  
Director  
Department of Corrections  
Huntsville, Texas

Opinion No. M-999

Re: Purchase of airplane by  
the Department of Cor-  
rections.

Dear Dr. Beto:

Your request for an opinion reads as follows:

"Some two months ago the Department of Corrections lost its plane. The Board of Corrections authorized its immediate replacement under the authority found in Senate Bill 11, Page III-48, Paragraph 22, and Section 18 of Article V, Acts of the 62nd Legislature, Regular Session, 1971. The Board had previously purchased an airplane under identical language found in prior appropriation bills.

"We would point out that this plane is used for the return of prisoners from other states to the Department of Corrections. Under the law, the Department of Corrections is required to return parolees and prisoners to this State in the event they owe Texas time. Our log reveals that 75% of the plane's usage is involved in the return of prisoners; 25% of the time is spent in travel for departmental executives.

"The above-mentioned plane was purchased in accordance with the law and when the claim was presented to the Comptroller of Public Accounts for approval and payment, he refused to pay the same. It

is our position that Section 22 of Article III and Section 18 of Article V of S.B. 11, appropriations for the Department of Corrections, Clearly authorizes our department to purchase this plane. Not only do we believe this expenditure is legal but the ownership of a plane by the Department of Corrections effects a great savings of the taxpayers money of this State.

"Does the Texas Department of Corrections, under the legislation referred to above, have the authority to purchase and pay for an airplane?"

Subdivison (a) of Section 18 of Article V of Senate Bill 11, Acts 62nd Legislature, R.S. 1971, as amended by Senate Bill 7, Acts 62nd Legislature, 1st C.S. 1971, provides:

"None of the moneys appropriated in this Act may be expended for the purchase, maintenance or operation of a passenger car or of airplanes designed for passenger transportation unless authority to do so is stated by the language of this Act. Where such authority is stated, the purchase of an airplane, or the repair of an airplane, the cost of which is in excess of five thousand dollars (\$5,000), in any one fiscal year shall have the prior written approval of the Governor, and notice of such approval shall be filed with the Legislative Budget Board." (At p. V-43)

Item 22 of the appropriation to the Department of Corrections contained in the above cited General Appropriation Act provides:

| "For the Years Ending     |                           |
|---------------------------|---------------------------|
| August 31,<br><u>1972</u> | August 31,<br><u>1973</u> |

"22. Consumable supplies and materials; current and recurring operating expense, including rewards; inquests; uniforms; medical expense of employees injured in line of duty; reimbursement of revolving funds; maintenance and operation of one airplane; capital outlay, including passenger cars; and contingencies

\$7,755,340" (At p.III-48)

Section 18 of Article V of the current General Appropriation Act above quoted is substantially identical, insofar as the same relates to your question, as Sections 20 and 21 of Article V of House Bill 12, Acts 59th Leg., R.S. 1965. Likewise Item 22 above quoted is substantially identical to Item 12 of the appropriation to the Parks and Wildlife Department contained in the 1965 Appropriation Act. In construing the provisions of the 1965 Appropriation Act above cited, it was held in Attorney General's Opinion C-559 (1965):

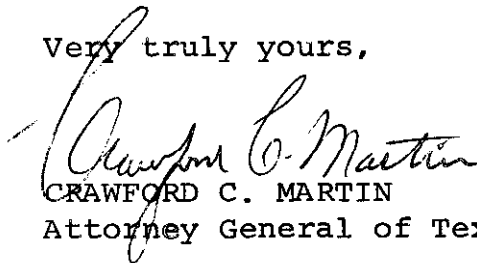
". . . Funds may be expended from paragraph 12, Article III-108, House Bill No. 12, Acts 59th Legislature, 1965, for the purchase, maintenance and operation of the airplane."

The language construed in Attorney General's Opinion C-559 (1965) is substantially identical to the language contained in the current General Appropriation Act applicable to the Department of Corrections. Our opinion is that under the facts submitted the Department of Corrections has the authority to purchase and pay for an airplane. The approval of the Governor is required if the purchase price is in excess of \$5,000.00.

S U M M A R Y

Funds may be expended from Item 22 of the appropriation to the Department of Corrections contained in the current General Appropriation Act for the purchase, maintenance and operation of an airplane by the Department of Corrections; provided that if the purchase price is in excess of \$5,000.00 the written approval of the Governor is required.

Very truly yours,



CRAWFORD C. MARTIN

Attorney General of Texas

Prepared by John Reeves  
Assistant Attorney General

APPROVED:  
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