Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

July 24, 1992

Honorable Rick Perry
Commissioner
Texas Department of Agriculture
P. O. Box 12847
Austin, Texas 78711

Opinion No. DM-145

Re: Interpretation of appropriations act rider regarding funds held by the Texas Federal Inspection Service (RQ-180)

Dear Commissioner Perry:

You ask about the validity of an appropriations act rider regarding certain funds now held by the Texas Department of Agriculture (hereinafter TDA). Specifically, you ask about rider no. 26 to the department's current appropriation. General Appropriations Act, Acts 1991, 72d Leg., 1st C.S., ch. 19, art. I, § 1, at 378. That rider provides as follows:

> CONTRIBUTION TO GENERAL REVENUE FUND. In accordance with the Cooperative Agreement between the United States Department of Agriculture and T.D.A., Section II(D)18, dated December 1981, all funds held by the Texas Federal Inspection Service on May 9, 1991 are to be deposited in the General Revenue Fund on September 1, 1991 and notification of the exact amount shall be sent to the Governor and Lt. Governor. An inventory of all property shall be delivered to the Office of the Governor and the Executive Director of the State Purchasing and General Services Agency or its successor agency on September 1, 1991, with transfer of title of that property to be accomplished by November 1, 1991.

The rider refers to a cooperative agreement regarding the inspection of agricultural products entered into by TDA and the United States Department of Agriculture (hereinafter USDA), which took effect on December 1, 1981, and terminated on

May 9, 1991. The rider deals with funds that, under the terms of the cooperative agreement, reverted to the TDA in May 1991.

Cooperative agreements between the USDA and the TDA are authorized by both state and federal law. The federal Agricultural Marketing Act of 1946, 7 U.S.C. §§ 1621 - 1627, authorizes the Secretary of Agriculture to prescribe rules regarding the inspection of agricultural products. 7 U.S.C. § 1622(h). Under section 1624, the secretary is authorized to enter into agreements with various entities, including states and state agencies, for carrying out its authority under the Agricultural Marketing Act. Chapter 91 of the Agriculture Code governs the grading, packing, and inspection of fruits and vegetables, other than potatoes. Under that chapter the department has authority to enter into cooperative agreements regarding the inspection of fruits and vegetables:

> The department may enter into cooperative agreements with the United States Department of Agriculture, or with any Texas firm, corporation, or association that is organized for that purpose, or both. An agreement may provide for the certification of grades of fruits and vegetables, other than potatoes, under this chapter.

Agric. Code § 91.005(a).[1]

The cooperative agreement in question assigned various tasks to the USDA and the TDA. It also assigned certain responsibilities to a third entity, the Texas-Federal Inspection Service (hereinafter Texas-Federal).[2] The significant aspects of

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[1]Section 92.031 of the Agriculture Code provides for cooperative agreements regarding inspections of tomatoes, and section 93.041 contains a similar provision applicable to citrus fruit. The cooperative agreement in question cites "applicable statutes of the State of Texas" as the state law authority for the agreement. Cooperative Agreement, page 1. Because the cooperative agreement applies to fruits and vegetables generally, we must assume that its statutory basis in Texas law is section 91.005(a), the most broadly applicable of the provisions regarding cooperative agreements for the inspection of agricultural products.

[2]Although the character of Texas Federal is unclear from the terms of the contract, we assume, for purposes of this opinion, that it is an entity organized for the purpose of inspecting and certifying agricultural products and that it is therefore a proper party to the contract between the TDA and the USDA in accordance with section 91.005(a) of the Agricultural Codes. *See generally*, Attorney General Opinion WW-224 (1957).

the agreement, for purposes of your question, are the provisions regarding the collection and disposition of fees. The only responsibility assigned to the TDA in regard to the collection or disposition of fees is that the TDA is required to deposit specified fees in the state treasury. Cooperative Agreement, part II(B)(4). Those fees are not at issue here. The agreement assigned a number of tasks regarding the collection and disposition of fees to Texas-Federal, including the responsibility to

> [c]ollect such shipping point inspection fees as may be imposed upon growers, shippers, processors or packers bound under a Federal Marketing Agreement or Marketing Order in force within this State or such other shipping point inspection fees as may be called for by the terms of this Agreement. Fees shall be reasonable and adequate to cover the costs of the services performed unless subsidized by State appropriations. Fees collected for inspections shall be used only for conducting the services under this Agreement.

Id. part II(C)(2). Texas-Federal was also assigned the responsibility of establishing a fund for shipping point inspection fees in a depository protected by federal and state banking laws and the responsibility of keeping an accounting of all receipts and disbursements. *Id.* part II(C)(4). No payment was to be made from those funds "except for the purposes of carrying out the inspection provisions of [the] Agreement and by vouchers jointly approved and countersigned by the Commissioner of Agriculture and by the Federal Supervisor or their respective designees." *Id.* part II(D)(3). The cooperative agreement also contained a provision regarding Texas-Federal's collection of fees for certain "receiving market inspections" but did not address the disposition of those fees. *Id.* part II(D)(1)(d). Another part of the agreement provided for the USDA to reimburse Texas-Federal for certain expenditures. The rider in question has to do with the disposition of funds held by Texas-Federal after the termination of the cooperative agreement. The agreement provided that in the case of termination

> all remaining funds or property held by Texas-Federal, after payment of all proper charges, will be transferred to any succeeding inspection service which is agreed upon by Cooperative Agreement between the State and Federal Agencies. If no agreement is reached within one year following

> the date of termination, all such funds or property will revert to the State Agency for its use or disposition.

Id. part II(D)(18). Because more than a year has passed since the cooperative agreement was terminated and because no succeeding inspection service was agreed upon during that year, the remaining funds and property held by Texas-Federal reverted to the TDA.

The rider sets out detailed instructions for the disposition of that money and property. There is, however, other law that governs the disposition of the property. Any money received by a state agency is to be deposited into the state treasury. Gov't Code § 404.093. Although there are several exceptions to this rule, *see id.*, there are no exceptions applicable to the funds at issue here. The statement in the cooperative agreement that the funds revert to the TDA does not affect this outcome. The statutory requirement that TDA deposit the funds in the state treasury is not inconsistent with the contractual provision that the funds go from Texas-Federal to the TDA. The transfer from Texas-Federal to the TDA is preliminary to the TDA's deposit of the funds in the state treasury. *See generally* Attorney General Opinion JM-772 (1987) (considering whether terms of federal grant can increase authority of governor under state law). The disposition of surplus personal property[3] is under the control of the General Services Commission in accordance with the terms of article 9 of article 601b, V.T.C.S. The TDA has no authority to dispose of assets otherwise.[4]

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[3]The fact that a title document may identify the TDA, rather than the state, as the owner of particular property would not give the TDA authority to dispose of the property other than in accordance with those principles. Attorney General Letter Opinion No. 41 (1990).

[4]You refer to an April 1991 agreement between the TDA and the USDA, in which the TDA and the USDA agree that the remaining funds and property held by Texas-Federal will be held in escrow until the TDA and the USDA decide what to do with them. The agreement provides that if no agreement is reached, the funds will revert to the USDA. Since the TDA had no right to the funds and property in question at the time of this agreement, presumably the TDA was attempting to give up its right to receive the remaining funds and property in May 1991. The TDA has statutory authority to enter into agreements regarding the inspection of agricultural products. It has no statutory authority to dispose of the funds of the state, which the funds in question would become upon their receipt by the TDA. Therefore, the TDA had no authority to enter into the April 1991 agreement at that time or any any time after reversion of the funds. *See also* Tex. Const. art. III, section 51 (prohibiting donation of public funds).

Appropriations act riders may detail or restrict the use of funds appropriated in the act.[5] Attorney General Opinions JM-860 (1988); MW-498 (1982); V-1254 (1951) at 8. They may not, however, impose requirements that are inconsistent with other law. Attorney General Opinion M-1199 (1972). Nor may they impose affirmative requirements where there is no general law on the subject. Attorney General Opinions JM-167 (1984); MW-585 (1982); MW-104 (1979); MW-51 (1979) at 5. To the extent, then, that the rider in question is consistent with other law, it is mere surplusage. To the extent that it is inconsistent, it is invalid. The disposition of the money that has reverted to the TDA is governed by section 404.093 of the Government Code and the money must therefore be placed in the state treasury. The disposition of any surplus personal property is subject to the control of the General Services Commission.

Your letter suggests that federal law requires that the money in question be used for inspection purposes and that therefore the TDA may not transfer the property to the state treasury, despite the requirements of section 404.093 of the Government Code.[6] Although that interpretation of the federal law is not obvious either from the relevant federal statutes or from the cooperative agreement, it would not in any case follow from such an interpretation that the TDA must retain the funds.[7] If federal law requires that the funds be used for a particular purpose,

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[5]Neither the contract nor your request indicates that Texas-Federal held any real property. In any event, the legislature has exclusive control over the disposition of state-owned land. Attorney General Opinion JM-1170 (1990); *see Lorino v. Crawford Packing Co.*, 175 S.W.2d 410, 414 (Tex. 1943); *Conley v. Daughters of the Republic*, 156 S.W. 197, 200 (Tex. 1913).

[6]Because of our conclusion we need not address whether the funds discussed in the rider can be considered to be "appropriated funds."

[7]You cite section 1622(h) of title 7 of the United States Code as authority for the proposition that the funds in question must be used for inspection purposes. That section states that fees prescribed by the federal Secretary of Agriculture for inspection services must be reasonable and must be calculated "as nearly as may be" to cover the cost of the service rendered. It also provides that fees collected under that section must be deposited in certain trust fund accounts and must be used for the cost of providing services. Cooperative agreements are governed by section 1624, and it would seem that the provisions of section 1622(h) would be applicable to funds collected pursuant to a contract entered into under section 1624 only if the contract provided that those funds were to go to the USDA. Also, it is worth noting that the cooperative agreement limits Texas-Federal's use of certain funds, but it contains no provisions governing TDA's use of funds that revert to the TDA under part II(D)(18).

that requirement would attach to the funds in the state treasury, and the legislature would be bound by any such requirement in appropriating the funds.

SUMMARY

Money that reverted to the Texas Department of Agriculture under a cooperative agreement with the United States Department of Agriculture is to be placed in the state treasury in accordance with section 404.093 of the Government Code. Surplus property that reverted to the Texas Department of Agriculture is subject to the control of the General Services Commission.

Very truly yours,

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