



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. J.D. Hall
State Board of Control
Austin, Texas

Dear Mr. Hall:

Opinion No. 0-266
Re: State Board of Control has authority to repair dam on the Guinn land in Cherokee County to furnish water to Rusk State Hospital.

Your letter of July 17, 1939, received, requesting an opinion from this department on the following question:

"Please advise if the State, acting through this Board (State Board of Control) and the Rusk State Hospital, now has the right to repair the State's old dam on the Guinn land and enjoy the full use and benefit of all of the rights and privileges mentioned in said legal instrument."

You attached thereto a copy of the deed dated October 5, 1885, signed by R.H. Guinn, and which is recorded in Book 0-3, Deed Records of Cherokee County on page 296.

Said deed conveys to the State of Texas "for the use and benefit of the penitentiary near Rusk and the industries therein and thereabouts carried on by the State of Texas, or any and all contractors connected in, and about said penitentiary as well -- the following right of way and water privileges, all right of way over and in my land of the A.H. White and Albert Pratt

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Head Rights which I now own -- that will be necessary to run and lay pipes and tubes for the purposes of conveying water from a certain hereinafter described dam on my land to said penitentiary and premises and machinery in and about said penitentiary."

The deed gives to the State of Texas the right to construct and build a dam across two certain branches on said land.

You state that the dam that was constructed about 1885 was used until the year 1932, when it was then destroyed by flood. The purport of your question is whether the Board of Control and the Rusk State Hospital, which said hospital is now occupying the buildings that were used by the penitentiary, plus the additional buildings that have been constructed for the State Hospital, can now rebuild the dam out of funds of the state.

Since you state that it is necessary to supplement the Rusk State Hospital's water supply, and that the construction of this dam will have that effect, we are of the opinion that your Board can, from funds available for the general expenses of the Rusk State Hospital, repair said dam, in order to increase the water supply.

We are further of the opinion that since the deed conveyed the rights therein named to the State of Texas for "the penitentiary near Rusk and the industries therein and thereabouts carried on by the State" the Rusk State Hospital is entitled to all the rights and privileges named in the deed.

Yours very truly

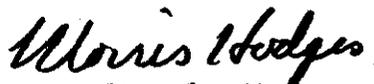
ATTORNEY GENERAL OF TEXAS

APPROVED JUL. 31, 1939

MH:ob


FIRST ASSISTANT
ATTORNEY GENERAL

BY


Morris Hodges
Assistant