



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN**

**GERALD C. MANN  
ATTORNEY GENERAL**

**Honorable W. Lee O'Daniel  
Governor of Texas  
Austin, Texas**

**Dear Sir:**

**Opinion No. 0-2042  
Re: Act of the Congress ceding  
land to Texas -- Acceptance  
by the State.**

**We are in receipt of your letter of February 28,  
1940, requesting an opinion from this department with  
respect to the above subject matter, which letter is in  
full as follows:**

**\*On February 23, 1940, I received from the  
Honorable Cordell Hull, Secretary of State,  
a certified photostatic copy of the follow-  
ing Act passed by the Seventh-Sixth Con-  
gress of the United States of America in  
the Third Session: 'Be it enacted by the  
Senate and House of Representatives of the  
United States of America in Congress assem-  
bled, That upon the acceptance of this Act  
by the State of Texas all of the parcels  
of tracts of land lying adjacent to the  
territory of the State of Texas, which  
were acquired by the Government of the  
United States of America by virtue of the  
convention between the United States of  
America and the United Mexican States  
signed February 1, 1933, shall be and be-  
come a geographical part of the State of  
Texas and shall be under the civil and  
criminal jurisdiction of the said State,  
without affecting the ownership of the  
said lands.'**

**\*I desire to call your attention to that  
portion of the Act which reads: 'That**

Honorable W. Lee O'Daniel - Page 2

upon the acceptance of this Act by the State of Texas'. Will you please inform me who is authorized under the law to accept this Act on behalf of the State of Texas?"

All voluntary acts of the State, whether of disposition or otherwise, affecting State-owned property are in their nature legislative and not judicial or executive. This principle of government determines the policy of the State, evidenced by the many enactments concerning public lands in the matter of sales, leases and the like. Thus, patents for land emanating from the State are required to be issued in the name and by the authority of the State under the seal of the State and of the Land Office, signed by the Governor and counter-signed by the Commissioner. (Rev. Civ. Stat. Art. 5413) Forfeitures of sales of land for non-payment of interest are authorized to be entered by the Commissioner of the General Land Office and reinstatements are likewise provided for by Article 5326. Leases and forfeitures of such leases of land are likewise provided by statutes. (Articles 5331 to 5336)

These acts merely serve the purpose of designating on behalf of the State the individual or individuals who act for the State in carrying out the State's declared policies, but the control itself is that of the State through the Legislature.

No precise case in point has come to our attention, the nearest approach being in the matter of the donation made by Archer M. Huntington to the Regents of the University of Texas in trust for certain State purposes, of date October 7, 1927. It seems that this donation was evidenced by a deed duly executed and placed of record upon the deed records of Galveston County, wherein the lands were situated. Thereupon, by simple resolution No. 51, found at p. 304 of Senate journal of the regular session of the 41st Legislature (1929) a resolution of thanks was tendered to the donor.

Upon the considerations here expressed you are respectfully advised it is the opinion of this department that the Legislature of Texas is the constituted governmental agent of the State, by appro-

private act to accept the lands ceded by the Congress to the State of Texas for the limited purposes enumerated. This it may do, either upon its own initiative or upon the recommendation of the Governor.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-MR

APPROVED MAR 15, 1940

*Gerald Mann*  
ATTORNEY GENERAL OF TEXAS

