



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Harry Knox, Chairman  
State Board of Control  
Austin, Texas

Dear Sir:

Opinion No. 0-3768

Re: Is it the duty of the Board of Control to approve the plans and designs and let contracts for the construction of buildings erected at State higher educational institutions from appropriations made by the Legislature out of the general fund?

In response to your letter of July 12, 1941, we have carefully investigated the statutes relating to the duties and responsibilities of the State Board of Control in connection with the designing and construction of buildings and the letting of contracts for the erection of buildings at State higher educational institutions where said buildings are to be paid for by appropriations made by the Legislature out of the General Revenue.

You state that under House Bill 272 as passed by the Acts of the 47th Legislature, appropriations were made for buildings and other major improvements at the State's higher educational institutions, including most of the State Teacher Colleges, Texas State College for Women, Texas Technological College, Texas College of Arts and Industries, John Farleton Agricultural College, and North Texas Agricultural College.

Article 2592 of the Revised Statutes provides:

"The Board of Regents of the University and the Board of Directors of the Agricultural and Mechanical College of Texas shall, with the approval of the Legislature, expend the available University fund for the construction of buildings on the campuses of their respective institutions and for the extension and improvement of their

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campuses and for the equipment of buildings thereon in the proportions and amounts hereinafter indicated."

Article 2593 provides:

"All contracts, with architects, plan makers, landscapers, or draftsmen or with any other person, firm or corporation of whatever name or designation shall be absolutely void unless same be approved by the signed written vote of the majority of said Board of Regents in regular or called meeting assembled, and provided further that all contracts for the construction or erection of such permanent improvements shall be absolutely void unless same are made after receiving sealed competitive bids after advertisement therefor."

Article 2596 provides:

"The Board of Regents are invested with the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by the University of Texas with the right to sell, lease and otherwise manage, control and use the same in any manner and at such prices and under such terms and conditions as they deem best for the interest of the University, not in conflict with the State Constitution."

Article 2613-9 provides:

"All expenditures for the Agricultural and Mechanical College of Texas may be made by the order of the Board of Directors and the same shall be paid on warrants from the Comptroller based on vouchers approved by the President of the Board of Directors."

Article 2613a-1 as amended in 1933 provides:

"The Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized to contract with persons, firms or corporations for the purchase of, or the acquisition of, or the erection of permanent improvements on or

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conveniently located in reference to the campus of said College, or to the campuses of any or all of its branch institutions and to purchase, sell or lease lands and other appurtenances for the construction of such permanent improvements provided that the State of Texas incurs no indebtedness under the contracts."

Article 2616 of the Revised Statutes provides:

"The government and direction of policies of the John Tarleton Agricultural College at Stephenville shall be vested in the Board of Directors of the Agricultural and Mechanical College of Texas."

Article 2620 of the Revised Statutes reads:

"The North Texas Junior Agricultural, Mechanical and Industrial College at Arlington shall be under the direction of board of directors of the Agricultural and Mechanical College designated herein the supervisory board in connection with a local board of managers composed of five members to be appointed by the Governor. \* \* \* Said local board shall perform all the duties required in the management of said college in like manner as governing boards of the same character."

Article 2625 provides:

"The board of regents of the College of Industrial Arts at Denton shall be composed of nine persons, four of whom shall be women. The board of regents shall have the power incident to their position and to the same extent, so far as may be applicable and shall receive like compensation as is conferred by law on the regents of the State University."

Article 2628a-7 provides:

"All power, duties and functions of the Board of Regents of the State Teachers Colleges under the law shall vest in the Board of Directors herein created in connection with the State Teachers

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College work of the institution herein provided for except where in conflict with this Act."

Article 2628a-8 provides:

"The Board of Directors of The Texas College of Arts and Industries is hereby authorized to enter into contracts with persons, firms, or corporations for the erection of dormitories at The Texas College of Arts and Industries, and to purchase or lease lands and other appurtenances for the construction of such dormitories, provided that the State of Texas incurs no liability for the buildings or the sites."

Article 2628b provides:

"The Board of Regents of the College of Industrial Arts at Denton, Texas, is hereby authorized and empowered to erect and equip, and/or to contract with any person, firm or corporation, for the erection, completion and equipping of such dormitories and/or other improvements as said Board of Regents may deem advisable, such improvements to be erected either on the campus or real estate then owned by said college, or on other real estate purchased or leased for the purpose, and the said Board of Regents is hereby expressly authorized to purchase, or lease, additional real estate for such purpose, or to exchange or sell real estate now or hereafter owned for such purpose."

In 1929 the Legislature passed Article 2647a, Vernon's Annotated Revised Statutes, Section 1 thereof reads as follows:

"The Board of Regents of the Teachers Colleges of Texas is hereby authorized to enter into contracts with persons, firms, or corporations for the erection of dormitories at any Teachers College, and to purchase or lease lands and other improvements for the construction of such dormitories, provided that the State of Texas incurs no liability for the buildings or the sites."

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Article 670 provides:

"The Board of Control shall prepare plans and specifications for improvement and repairs to public buildings or property of the State, and shall superintend through its division of public buildings and grounds, the construction of said work when such supervision is not otherwise especially provided for by law."

Article 671 of the Revised Statutes provides:

"The Board of Control shall inspect all plans and specifications for the public buildings and the additions thereto to be constructed for the state before such plans and specifications are adopted. The Board may reject any and all such plans and specifications; and it shall have full and final superintendency over all buildings, structures or additions thereto that may be constructed for the State."

Articles 672 and 673 provide for the inspection and examination and upkeep of all state buildings by the Board of Control.

Article 681 of the Revised Statutes provides:

"The Board of Control, through the chief of such division, shall design all public buildings erected at the expense of the state where designing is not otherwise provided for by law or by the appropriation bill, but in no instance shall plans or designs be adopted by the head of any department, board, institution, school or prison system of the state unless such design and plans have been approved by the Board."

Upon a casual reading of the above statutes relative to the various schools of Texas and the power of the boards of trustees of said institutions to let the contracts for and supervise the construction of buildings and permanent improvements and the articles giving the Board of Control supervision and control of the construction of public buildings there appears to be some conflicts.

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The act of the Legislature in 1919 creating the Board of Control apparently had as its objective the placing under one board the power and the authority to purchase supplies for all state institutions when same are to be paid for out of the general revenues. In dealing with public buildings it was evidently the purpose of the Legislature to place under the control and care of the Board of Control the buildings for all public institutions, which institutions were in turn to be controlled by said board, such as the asylums and institutes for the blind.

Since the act of 1919 was passed creating the Board of Control most of the above statutes giving the Board of Directors of the various schools power and control of the erection of permanent buildings and the purchase of land and giving said institutions the right of eminent domain have been passed.

We are informed that it has never been the custom of the Board of Control to prepare plans and designs or to in any way control the kind or character of permanent buildings erected by any of the State schools, this having been left entirely to the Board of Directors of each of said schools and colleges. The Legislature has continued to make appropriations for permanent buildings at the various colleges and schools presumably with the knowledge of the fact that the Directors of the schools have been expending the money independent of the Board of Control. While this construction is not controlling, it is highly persuasive.

If the Board of Trustees of the State's higher educational institutions cannot let a contract for the erection of a building for which an appropriation has been made by the Legislature until and unless the plans and designs therefor have been approved and adopted by the Board of Control there is no way for said buildings to be constructed if said Boards cannot agree upon the plans and design.

The fact that the Legislature has for the past 20 years made appropriations for the erection and construction of buildings at these various universities and colleges knowing that same would be expended and the buildings erected upon plans and designs and specifications drawn and prepared by the respective Boards of Trustees of the particular institution for which the appropriation was made; and the fact

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that the Board of Control as well as the Board of Trustees of these various institutions have so construed said statute and appropriation bill during all of these years are as we have above stated highly persuasive although it is not absolutely controlling.

It is of course the rule that courts will in construing statutes preserve all statutes as passed by the Legislature rather than destroy same and will when possible reconcile apparently conflicting statutes so that both or all of same may be preserved.

It is therefore our opinion that the State Board of Control is not required to approve the plans and designs and let contracts for the construction of the buildings or other major improvements at the State's higher educational institutions. Said responsibility rests upon the respective Boards of Regents of said institutions.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED SEP 23, 1941

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By

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GWB:mp

