



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

San Houston State Teachers College
Huntsville, Texas

Dear Sirs:

Attention: Mr. O. E. Barrett

Opinion No. O-4681

Re: Purchase of airplanes by San
Houston State Teachers College
and other matters.

We have received your letter of recent date which we quote in part as follows:

"We have received the following letter from Mr. Charles B. Wood, Attorney at Law, Houston, Texas, and we would like very much for you to write us your opinion on the correct answers to his questions:

"Will you please let me know whether the San Houston State Teachers College is incorporated or is a corporate body, and whether or not it can take title to real or personal property, and as to whether or not it can take and handle bequests or gifts to it."

"Also please send us your opinion as to whether or not the San Houston State Teachers College can legally enter into the following transactions:

"1. Can the college borrow money for the purpose of operating its Civil Pilot training program and purchasing planes to be used in training the boys taking this course? The money would be repaid within a year from the fees paid by the federal government to the college for training these students. The contract with the federal government and the planes would be up as security, but

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no further obligations on the part of the college or the state would be incurred.

"2. Can the college legally purchase planes and parachutes on an installment plan with the understanding that the entire purchase price would be paid from the federal government for operating the school?

". . . ."

The San Houston State Teachers College is not incorporated or a corporate body in the sense of being governed by a charter filed with the Secretary of State. On the other hand, it is an agency of the State and is governed by legislative act. (See *Rainey, et al. v. Malone*, 141 S. W. (2d) 713, wherein it was held that the Board of Regents of the University of Texas was the head of a department of the State Government.) The Board of Regents of the State Teachers College is a body corporate in the sense that it is empowered to acquire property under the conditions set out in the statutes. We believe that this question of whether the college is a body corporate or not is asked in connection with the two questions that follow it--whether it can take title to real or personal property, and whether it can take and handle bequests or gifts to it.

The Board of Regents of the State Teachers Colleges is empowered and authorized to construct and equip buildings, purchase supplies, and acquire land for the use and benefit of any state teachers college. Article 2647, Revised Civil Statutes of 1925; Article 2647b, Vernon's Annotated Civil Statutes. And it is authorized to construct or acquire through funds or loans to be obtained from the United States Government or one of its agencies or from any other source the buildings described in Article 2603c, Vernon's Annotated Civil Statutes, and pledge the revenues of said buildings to the payment of bonds or notes issued for the construction or acquisition of such buildings. See also Article 2909a, Vernon's Annotated Civil Statutes, providing for the erection and equipment of dormitories, cottages, and stadiums, and the pledging of the revenues therefrom for the payment thereof. To the extent that the statutes authorize, therefore, the Board of Regents

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may acquire title both to real property and personalty for the use and benefit of the San Houston State Teachers College.

There is no general law authorizing the college or the Board of Regents to accept gifts. Hence, we must hold that no such general authority exists. In the case of Fort Worth Cavalry Club v. Sheppard, 125 Tex. 339, 83 S. W. (2d) 660, Justice Critz speaking for the Supreme Court said:

"All public offices and officers are creatures of law. The powers and duties of public officers are defined and limited by law. By being defined and limited by law, we mean the act of a public officer must be expressly authorized by law, or implied therefrom. 22 R.C.L., p. 555, § 114. . . ."

Article 2595, Revised Civil Statutes, authorizes donations under conditions therein specified for the purpose of establishing a professorship or scholarship in the University of Texas or any of its branches. The donation of tax delinquent land to the Board of Regents of the University of Texas is authorized by Article 2595a, Vernon's Annotated Civil Statutes, under certain conditions. The Board of Directors of the Agricultural and Mechanical College is authorized to accept gifts, donations or contributions of land suitable for forestry purposes. Article 2613a-2, Vernon's Annotated Civil Statutes. In other words, these statutes specifically authorize the acceptance of donations.

Section 8 of Article 2603, providing for the construction of buildings and the pledging of revenues therefrom, reads as follows:

"Sec. 8. Provided further that each of said boards (in this instance, the Board of Regents of the State Teachers Colleges) is hereby authorized to acquire by gift or by purchase out of funds derived by pledging the revenues as herein provided such tracts of land, without cost to the State of Texas as may be necessary as building sites and grounds for the erection of such buildings."
(Parenthetical insertion and emphasis ours).

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The reasoning behind the requirements of legislative authority for the acceptance of gifts is easily seen. Many gifts are given on conditions which require detailed supervision. As time goes on complications might arise which would interfere with the effective management of the college.

In view of the foregoing you are respectfully advised that the Board of Regents may accept gifts for the use of San Houston College only as it is authorized to do so by legislative enactment. We believe that this rule is qualified to this extent: we believe that the property which the Board of Regents is authorized to purchase for the benefit of San Houston State Teachers College may be acquired by gift if such acquisition is subject to no greater restrictions. We do not believe that the law requires a payment of consideration if the property, authorized by law to be purchased, can be obtained free.

The problem of making a gift to the San Houston State Teachers College may be solved by making the gift to the State of Texas for the use and benefit of said college. The Legislature may by resolution accept the gift. If it does, then the college will receive the use and benefit of the gift in accordance with the terms of same.

We now turn to your enumerated questions. In Question No. 1, you ask whether the college may borrow money for the purpose of operating its Civil Pilot Training Program and purchasing planes to be used in the program. You state that the money would be repaid within a year from fees paid by the Federal Government, that the planes would be put up as security, but that no further obligation on the part of the college or State would be incurred.

It is our opinion that the San Houston State Teachers College may not borrow money for the purposes mentioned.

In the first place, there is no statutory authority for the college itself to maintain such a program. In Section 3 of Article 2647 it is said: "Said board shall not change any department of instruction provided by law, and no department shall be established for the support of which provision has not been made by the Legislature." Provision has not been made by the Legislature for this program. It follows that the college may not purchase airplanes.

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Articles 2603e and 2909a, Vernon's Annotated Civil Statutes, provide for the construction of certain buildings and the pledging of the revenues of such buildings for the payment thereof. However, it is our opinion that the purchase of airports or airplanes does not come within the terms of such articles.

This past session of the Legislature passed Senate Bill 147 which authorizes the Board of Directors of the Agricultural and Mechanical College to acquire an airport and equipment therefor. (Acts 1941, 47th Leg., R. S., Ch. 81, S. B. 147, p. 100; Article 2615e, Vernon's Annotated Civil Statutes). This act is certainly indicative that specific legislative authority is required. The emergency clause of the act reads in part as follows:

"Sec. 3. The fact that said institution is in urgent need of the authority to acquire and operate an airport in connection with courses now being taught and those contemplated, and to permit its more effective cooperation in the National Defense Program, creates an emergency . . ."
(Emphasis supplied).

There is no authority for the Sam Houston State Teachers College to purchase or operate an airport or airplanes. It follows that said college may not borrow money to purchase airplanes.

If we should hold that the college could purchase the planes, the question would then arise as to whether the fees paid the college by the Federal Government would be State moneys, and if so, whether the college could use such moneys, without legislative appropriation, for the purchase of planes. In our opinion No. 0-1694 the following was stated:

"It will be noted that Article 2654d provides that the board 'may retain control' of local or institutional funds, but said article does not give express authority to the board of regents to pledge local funds which may be available in the future. When all of the sections of Article 2654d are construed together, we believe that it is evident that the intention of the Legislature was to give the local boards merely the right to keep such local

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funds in a local depository, instead of requiring that they be transmitted to the State Treasury, and that there was no intention to confer on such boards the power to pledge such local funds as might accumulate in the future. The power to pledge such funds is, we believe, one which the Board of Regents would not have in the absence of express legislative authority. It is well settled that 'public officers and governmental and administrative boards possess only such powers as are expressly conferred upon them by law or are necessarily implied from the powers conferred.' 34 Tex. Juris. 440."

In view of our holding this question is not before us, and we express no opinion thereon.

What we have said with respect to your first question applies equally to your second. It follows that your second question is answered in the negative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *George W. Sparks*
George W. Sparks
Assistant

GWS:MP

APPROVED JUL 3, 1942

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ATTORNEY GENERAL OF TEXAS

