



4839

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Coke R. Stevenson
Governor of Texas
Austin, Texas

Dear Governor Stevenson:

Opinion No. 0-4839
Re: Authority of the Governor of Board of Control to grant a pipe line easement covering certain land in the Sand Beach Reserve to the Fish and Wild Life Service of the Department of Interior to be used in the developing of a water supply for the Austin Fish Propagation Station.

You have requested the opinion of this department as to whether it is in the power of the Board of Control or the Governor to grant to the Fish and Wild Life Service of the United States Department of the Interior an easement to install a pipe line from a point on the north side of Sand Beach Reserve to a point to be located approximately four hundred feet toward the Colorado River to be used in developing a water supply for the Austin Fish Propagation Station. The fish produced here are to be used in stocking, free of charge, the waters of the State of Texas.

Since an easement constitutes an interest in land what authority the Board of Control or Governor would have to grant such an easement would depend upon the authority of such officials to convey the land.

The authority to convey public land of this State must be found in the provisions of the Constitution and statutes relative thereto.

Section 34 of Article XVI of the Texas Constitution provides:

"The Legislature shall pass laws authorizing the Governorto lease, or sell to the Government

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of the United States, a sufficient quantity of the public domain of the State necessary for the erection of forts, barracks, arsenals, and military stations, or camps, and for other needful military purposes; and the action of the Governor therein shall be subject to the approval of the Legislature."

Articles 5242 and 5243 of the Revised Civil Statutes of 1925 provide as follows:

"Art. 5242. The United States Government through its proper agent, may purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as it deems expedient and may seek to occupy and hold as sites on which to erect and maintain light houses, forts, military stations, magazines, arsenals, dock yards, custom houses, post offices and all other needful public buildings, and for the purpose of erecting and constructing locks and dams, for the straightening of streams by making cutoffs, building levees, or for the erection of any other structures or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas and the consent of the Legislature is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law."

"Art. 5243. When this State may be the owner of any land desired by the United States for any purpose specified in this title, the Governor may sell such land to the United States, and upon payment of the purchase money therefor into the Treasury, the Land Commissioner, upon the order of the Governor, shall issue a patent to the United States for such land in like manner as other patents are issued."

The easement desired by the Fish and Wild Life Service does not appear to be for any of the purposes set out in the above quoted statutes and constitutional provisions.

Therefore, it is the opinion of this department

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that neither the Governor nor the Board of Control has the authority to grant to the said Fish and Wild Life Service the easement in question.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY *E. F. Price*
E. F. Price
Assistant

EFP:LV

APPROVED SEP 25, 1942

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY *G. C. Mann*
CHAIRMAN

O.K. R.
C.R.