OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-6673
Re: Rent on certain office space occupied by Railroad Commission in 1943.

We have your letter of July 3, 1945, calling our attention to a conflict between our Opinions Nos. O-5427 and O-5650, and a letter dated March 22, 1945, addressed to Mrs. Neveille Colson, Chairman of Committee on Claims and Accounts, relating to A. G. File No. 6757-93. You request that we advise what course should be followed by you.

The letter to Mrs. Colson pertains to claims against the Railroad Commission for rent on office space occupied by it as follows:

$ 66.66	Kash-Karry Grocery, Austin, Texas.	September 1943
80.00	Petroleum Building, Wichita Falls, Texas . . .	September 1943
75.00	Guaranty Title & Trust Co., Corpus Christi, Texas.	September 1943
175.00	E. B. Robinson, Austin, Texas.	September 1943
50.00	City of Palestine.	September 1943
50.00	West Texas Chamber of Commerce, Abilene, Texas .	September 1943
30.00	Cleland & Cleland, Mt. Pleasant, Texas. . . .	September 1943
226.50	Sterling Building, Houston, Texas	September 1943
15.00	Mrs. L. J. Schneider, Austin, Texas.	September 1943
75.00	City of Pampa.	September 1943

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$200.00	S. S. Laird, Kilgore, Texas	September 1943
65.00	Milam Building, San Antonio, Texas	September 1943
125.00	Petroleum Building, Midland, Texas	September 1943
100.81	Petroleum Building, Midland, Texas	October 1, to October 25, 1943

We are advised that leases on all of the above spaces were executed prior to May 7, 1943. The Forty-eighth Legislature passed Senate Bill No. 266 (Article 666b, V.A.C.S.) with the requisite majorities in both houses, and it became effective on May 7, 1943. Sections 1 and 2 of this Act are as follows:

"Section 1. Hereafter all departments and agencies of the State Government, when rental space is needed for carrying on the essential functions of such agencies or departments of the State Government, shall submit to the State Board of Control a request therefor, giving the type, kind, and size of building needed, together with any other necessary description, and stating the purpose for which it will be used and the need therefor.

"Sec. 2. The State Board of Control, upon receipt of such request, and if the money has been made available to pay the rental thereon, and if, in the discretion of the Board such space is needed, shall forthwith advertise in a newspaper, which has been regularly published and circulated in the city, or town, where such rental space is sought, for bids on such rental space, for the uses indicated and for a period of not to exceed two years. After such bids have been received by the State Board of Control at its principal office in Austin, Texas, and publicly opened, the award for such rental contract will be made to the lowest and best bidder, and upon such other terms as may be agreed upon. The terms of the contract, together with the notice of the award of the State Board of Control will be submitted to the Attorney General of Texas,

> who will cause to be prepared and executed in accordance with the terms of the agreement, such contract in quadruplicate; one of which will be kept by each party thereto, one by the State Board of Control, and one by the Attorney General of Texas. The parties to such contract will be the department or agency of the government using the space as lessee and the party renting the space as lessor."

In Opinion No. O-5457 we held that this Act did not cancel, on the effective date of the Act, any leases and rental agreements entered into prior to May 7, 1943, but that all such leases would be terminated on August 31, 1943, (the end of the then current biennium) and that any subsequent lease would have to be entered into in the manner prescribed by Sections 1 and 2 of the Act.

We are constrained to re-affirm said Opinion No. O-5457, and you are advised that no warrants may be issued by you to pay any of the above listed claims for rent.

Since the Legislature has prescribed a mode for the securing of office space by the various State agencies and departments, they are restricted to that mode and must comply with those requirements in order to bind the State. Ferguson v. Halsell, 47 Tex. 421. See also Weaver v. Robinson (Com. App.), 268 S. W. 133, at 141:

> "When the Legislature has spoken in plain language, there is no room for construction. Nor, under those circumstances, are the courts to be concerned with the policy of the enactment or the justice of its effect. Along this line, our Supreme Court as far back as the case of Engelking v. Von Wamel, 26 Tex. 469, 471, said:
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> "'Where language is plain and unambiguous, there is no room for construction. It is never admissible to resort to subtle and enforced constructions to limit or extend the meaning of language. And, where words or expressions have acquired a definite meaning in law, they must be so expounded.'"

Our Constitution provides that no grant of public funds shall be made to an individual out of the State Treasury, except where same is provided for by pre-existing law. Section 44, Article III. It is further provided that "No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; . . ." Section 49, Article III. Under these provisions it is well settled that no one has authority to make a contract binding on the State, except where he is authorized so to do by the Constitution or a pre-existing statute. Ft. Worth Cavalry Club v. Sheppard, 125 Tex. 339, 83 S. W. (2) 660; Nichols v. State, 32 S. W. 452; State v. Haldeman, 163 S. W. 1020, writ refused; State v. Wilson, 71 Tex. 291, 299, 9 S. W. 155; State v. Peristein, 79 S. W. (2) 143, 148 (writ dismissed); State v. Ragland Clinic-Hospital, 138 Tex. 393, 159 S. W. (2) 105.

Since the powers of all State officers are fixed by law, all persons dealing with them are charged with notice of the limits of their authority and are bound at their peril to ascertain whether the contemplated contract is within the powers conferred. There is no occasion in such a case for indulging in presumptions or in relying on appearances. State v. Ragland Clinic-Hospital, supra.

We realize the harshness of our holding, but are powerless to alter the plain dictates of the Constitution in Article III, Section 44 and Section 49 and of the Legislature in Article 666b, V.A.C.S.

We are hereby withdrawing our letter of March 22, 1945, addressed to Mrs. Colson.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Arthur L. Moller
Arthur L. Moller
Assistant

APPROVED JUL 19, 1945

FIRST ASSISTANT
ATTORNEY GENERAL

ALM:mp

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN