



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Weaver H. Baker, Chairman
State Board of Control
Austin, Texas

See V-206 for change in fact situation.

Dear Sir:

Opinion No. 0-6780

Re: Application of House Bill
No. 728, 49th Legislature,
concerning purchase of the
old French Embassy with
moneys in the Texas Cen-
tennial Commission fund,
and related questions.

Your request for opinion of recent date has been considered carefully by this department. House Bill No. 728, which was passed by the 49th Legislature, is entitled:

"AN ACT providing for the purchase of property known as the French Embassy and consisting of two and one-half (2½) acres, known as the Old French Embassy property, and all buildings and furniture therein. Said building is hereby set aside for the uses and purposes of the Daughters of the Republic of Texas, and the said Daughters of the Republic of Texas be and the same are hereby authorized to take full charge of said building and use of the same as they may see proper. The property of the said French Embassy shall be the property of the State, and the title of said property shall remain in custody of the Board of Control; and declaring an emergency."

Section 1 provides:

"There is hereby appropriated all moneys now in the Texas Centennial Commission funds if and when available, to apply on the purchase of the French Embassy building and all properties therein."

Section 2 contains a description of the property to be purchased under said Bill.

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Section 3 provides:

"Said building is hereby set aside for the uses and purposes of the Daughters of the Republic of Texas, and the said Daughters of the Republic of Texas be and the same are hereby authorized to take full charge of said building and use of the same as they may see proper. The property of the said French Embassy shall be the property of the State, and the title of said property shall remain in the custody of the Board of Control."

You ask whether the appropriation of the balance of the Texas Centennial Commission fund is authorized. In our Opinion No. 0-6522, addressed to the Honorable Harley Sadler, a copy of which is enclosed herewith, we passed on the authority of the Legislature to now appropriate the balance in this fund for the purpose of purchasing the Embassy. It is the opinion of this department that the appropriation is authorized, provided that a release is obtained from the proper Federal authority before said fund is disbursed.

You ask also:

"What agency is authorized to negotiate for the purchase of the old French Embassy, and on what terms?"

By Article XVI, Section 39, of the Constitution of Texas, the Legislature is given the authority and is charged with the duty of preserving memorials of the history of Texas. The intent of the Legislature is most clearly expressed in House Bill No. 728 -- to effect the purchase of the Embassy, which is intimately connected with the early history of Texas. There is some question, however, whether the Legislature provided for the appropriate mechanism to effectuate its purpose. No individual or agency is directed to negotiate for the purchase in this bill.

The canons of statutory construction have been expressed variously in these terms:

"That which is implied in a statute is as much a part of it as what is expressed, is a settled rule of construction. ... When a statute commands or grants anything, it impliedly authorizes whatever is necessary for executing its

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commands or whatever is indispensable to the enjoyment or exercise of the grant. ..." 39 Tex. Jur. 176, Sec. 93.

"Thus it is settled that a statute will be construed with reference to its intended scope, its general purpose, and the ends or objectives sought to be obtained. Every provision, clause or word of an act will be construed with reference to its leading idea or general purpose, and brought, so far as possible, into harmony therewith." 39 Tex. Jur. 216, Sec. 116.

"A statute or provision should not be given a construction rendering it fruitless, futile, meaningless, purposeless, or useless, when the language can be otherwise construed. The reason of the rule, is that the Legislature is not to be credited with doing or intending a foolish, useless or vain thing" 39 Tex. Jur. 222, Sec. 118.

House Bill No. 728 gives the Daughters of the Republic authority to take full charge of said building and to use same as they may see fit. We are advised that, although the unexpended balance of the Texas Centennial Commission fund is only approximately \$24,000, the purchase price of the Embassy will be substantially in excess of that sum, or approximately \$37,000. The difference of some \$13,000 will be raised by the Daughters of the Republic by private subscription.

Under all of these circumstances, all of which must have been well known to it, it is only logical to assume that the Legislature intended for the Daughters of the Republic to negotiate for the purchase of the property described in House Bill No. 728.

As we have pointed out in Opinion No. 0-6522, the money in the Texas Centennial Commission fund cannot be released to the Daughters of the Republic, for to do so would violate Article III, Section 51, of the Constitution.

However, when there is tendered to the Board of Control a good and sufficient deed conveying fee simple title in this property to the State of Texas, you will be authorized to accept the same for the State. Thereupon you will be authorized to request that the Comptroller issue a warrant for the

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payment out of the Treasury to the owners of said property, of the balance of said fund, provided, of course, that the actual purchase price of said property is at least equal to that balance. The Comptroller will be authorized to issue said warrant, and the Treasurer will be authorized to pay same, provided the release referred to above has been obtained.

This procedure will effectuate the provisions of House Bill No. 728, that:

"The property of said French Embassy shall be the property of the State, and the title of said property shall remain in the custody of the Board of Control."

Your last question is:

"Is the authorization to the Daughters of the Republic of Texas to take full charge of said building valid?"

This same question arose with reference to the purchase and custody of the Alamo. Acts 29th Legislature, Chapter 7, provided for the purchase of the Alamo by the State, and delivery of the property "to the custody and care of the Daughters of the Republic of Texas." The Supreme Court, in passing upon the validity of such provision in the case of Conley v. Daughters of the Republic, 156 S.W. 197, 200, said:

"The power of the Legislature of this state, with reference to the property in question, is not limited by any provision of the Constitution; therefore, it has in general 'the same rights and powers in respect to property as an individual. It may acquire property, real or personal, by conveyance, will, or otherwise, and hold or dispose of the same or apply it to any purpose, public or private, as it sees fit. The power of the state in respect to its property rights is vested in the Legislature, and the Legislature alone can exercise the power necessary to the enjoyment and protection of those rights, by the enactment of statutes for that purpose. ... The state has, in general, the same power to contract as a corporation or an individual.' 36 Cyc. pp. 869, 871.

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"We are of opinion that the state, acting by its Legislature, had the authority to acquire title to the Alamo property and to place that property in the custody of the corporation, the Daughters of the Republic. ..."

Of like import is King v. Sheppard, 157 S.W. (2d) 682, error refused, which concerned the purchase of the Big Bend National Park by the State and delivery thereof to the Federal Government.

We are, therefore, of the opinion that the provision authorizing the Daughters of the Republic to take full charge of the Embassy is a valid one.

Trusting that we have answered your inquiries fully,
we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Arthur L. Moller*
Arthur L. Moller
Assistant

ALM:db

[Handwritten Signature]
AUG 28, 1945
FIRST ASSISTANT
ATTORNEY GENERAL

