



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GROVER SELLERS

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ATTORNEY GENERAL

Honorable Geo. W. Cox, M. D.
State Health Officer
Texas Board of Health
Austin, Texas

Dear Doctor Cox:

Opinion No. 0-6798

Re: Authority to dispose of certain
personal property not needed
by a State hospital.

In your letter of August 24, 1945, you have requested an opinion from this office relative to the above subject ~~and your letter containing the request and the pertinent facts is quoted:~~

"By warranty deed dated June 28, 1945, the trustees of the London Independent School District, Rusk County, Texas, et al conveyed to the State of Texas for the use and benefit of the State Department of Health 3.47 acres of land, a part of the T. J. Martin original survey, Rusk County, Texas, together with a ten-classroom school building, water tower, deep well and other appurtenances and improvements located thereon, for a consideration of \$20,000. cash-in-hand paid.

"The State Health Officer and the State Board of Health are converting the school building into a 120-bed hospital for the maintenance and treatment of venereal disease patients. The classrooms have composition blackboards on the walls. The County Superintendent of Public Instruction of Smith County, Texas, proposes to remove the composition blackboards, chalk troughs, and holdings, re-finish where the blackboards were removed, and paint the walls for the blackboards, moldings and chalk troughs. These blackboards, moldings and chalk troughs are of no use to the Texas State Department of Health and the Medical Officer in Charge wants them removed.

"The science room in the school building has 7 science tables with water, gas and sewer connections. These tables have acid-proof sinks and are valuable in the teaching of chemistry, but are of no value to the building as a hospital.

"The roof of the building is partly clay tile and partly composition asphalt and gravel. Both classes of roof have some leaks and considerable water flows through the roof into the building in heavy storms. A proposition has been made by a competent, experienced, builder to repair the roof, downspouts and other fixtures in consideration of receiving in payment the 7 science tables.

"We understand under existing law that if we should sell the blackboards and science tables through the Board of Control, we will be required to deposit the proceeds in the general fund of the State Treasury.

"We wish you to advise us whether we can legally exchange the blackboards and science tables for the repair of the walls and the roof."

The question here presented is whether public personal property which is no longer needed may be exchanged for work or services necessary in the repair of a public building. No authority for such an exchange has been found but to the contrary it appears that the disposition of the public personal property mentioned in your letter should be governed by Article 666, Vernon's Annotated Civil Statutes of Texas as amended which provides as follows:

"All property belonging to the state, regardless of where it is located, under the control of any department, commission, board, or other state agency, with the exception of state eleemosynary institutions, colleges, and institutions of higher learning, when it shall become unfit for use, or shall be no longer needed, shall be placed under the jurisdiction of the Board of Control, and the Board of Control shall sell such property after advertising it not less than four (4) days in a newspaper in the county wherein the property is situated. Provided, however, that if no newspaper is

published in the county wherein the property is situated, notice of said sale setting out the time and place of sale and the property to be sold shall be posted in three (3) public places, one being in a court house in the county wherein the property is situated. Provided, however, that if the value of such personal property is less than One Hundred (\$100.00) Dollars and not sufficient to justify the cost of advertisement in newspapers as outlined above, the Board of Control may sell such property in any manner that it deems for the best interest of the state. The money from the sale of such property, less the expense of advertising the sale, shall be deposited in the State Treasury to the credit of the General Revenue Fund. And provided further, that any property placed in the hands of the Board of Control, as outlined herein, may be transferred by the Board of Control to any department, commission, board or state agency in need of same, and the debit and credit shall be made on the basis that such property can be purchased in the market at the time of the transfer, if a market exists, and if not, at its actual or intrinsic value as set by the Board of Control. The Board of Control shall make a written report to the Comptroller after each sale. The report shall include the following items:

- "1. Name of the newspaper and the dates of advertisement of notice of sale; or if posted, the date and place of posting.
- "2. Each article received.
- "3. The price for which each article was sold.
- "4. The name and address of the person to whom each article was sold.

"This report shall be signed by the Board of Control and a member of the department, commission, board or state agency having control of the property before sale."

The above quoted statute requires that in the disposition of State property a sale thereof must be made pursuant to the procedures set forth and the only exceptions

to such requirements are "state eleemosynary institutions, colleges and institutions of higher learning." It is not believed that the State Board of Health or any of its divisions come within these exceptions. It follows therefore that the science tables and the blackboards or the school equipment in question must be sold pursuant to this Article and the proceeds from such sale deposited in the State Treasury to the credit of the General Revenue Fund.

It appears that the necessary repairs to the public building described in your request should be accomplished pursuant to Article 670 and 673, Revised Statutes of Texas as amended which provide as follows:

"The Board 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 670)

"When needed improvements or repairs for respective buildings and offices are called to the attention of the Board by the heads of such departments or offices, the Board shall provide for such repairs or improvements, and they shall be made under its direction." (Article 673)

The foregoing considered, you are advised that it is the opinion of this office that under no circumstances may the school equipment in question be exchanged for the services necessary in repairing the building and that the necessary repairs to the building can only be accomplished by the Board of Control pursuant to the Articles above mentioned.

Very truly yours

JL:mp--PAM
APPROVED SEPT 13 1945
CARLOS C. ASHLEY
FIRST ASSISTANT
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By Jackson Littleton
Assistant

THIS OPINION
CONSIDERED AND
APPROVED IN
LIMITED CONFERENCE