



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. D. M. Wiggins
President, College of
Mines and Metallurgy
El Paso, Texas

Dear Dr. Wiggins:

Opinion No. 0-7063

Re: Whether or not the item
\$7,748.30 in H. B. No. 701 -
Miscellaneous Claims - 49th
Legislature, R. S., to pay the
College of Mines and Metallurgy
for the purpose of acquiring
additional lands, may be used
in part for paving, curbing and
constructing sidewalks around
the property involved.

We beg to acknowledge receipt of your request for
an opinion concerning the above subject matter, your letter
in full being as follows:

"Following up a conference of Miss Betty Anne Thedford,
Assistant Registrar of the College of Mines, El Paso, Texas,
with both Governor Coke Stevenson and with Judge L. H.
Flewellen of your staff, I am writing you in regard to
the following item which appears in H. B. No. 701 of the
49th Legislature, Regular Session, and which item is
found on Page 481 of the GENERAL AND SPECIAL LAWS, TEXAS,
REGULAR SESSION, 1945:

"To pay the College of Mines and Metallurgy, a
branch of The University of Texas at El Paso, for the
purpose of acquiring additional lands within and adjacent
to the present campus of the College of Mines and Metal-
lurgy, in lieu of the twenty-two acres of land formerly
belonging to said college and being a part of the August
Meisel Survey, Number 187, situated near El Paso, in
El Paso County, and which twenty-two acres of land was
condemned by the United States Government and so taken

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by the United States Government for enlarging and improving the Military Post or Reservation at Fort Bliss, Texas, for which the amount hereby appropriated was received from the United States Government and deposited in the State Treasury to the credit of the Permanent Fund of the University of Texas. \$7,748.30'

"On February 5, 1945, Senator H. L. Winfield introduced in the Senate the following bill, hereafter known as S. B. No. 110:

"A BILL TO BE ENTITLED

"AN ACT making an appropriation of \$7,748.30 to the College of Mines and Metallurgy, a branch of The University of Texas, at El Paso, Texas, for the purpose of acquiring additional land within and adjacent to the campus of said College and the making of improvements thereon; and declaring an emergency.

"PREAMBLE

"WHEREAS, under a judgment rendered on October 27, 1941, in a condemnation proceeding styled "United States of America v. State of Texas, et al, No. 107-Civil," in the United States District Court for the Western District, El Paso Division, State of Texas, the United States Government acquired title to a tract of 22 acres of land, being a part of the August Meisel Survey No. 187 situated near El Paso, County of El Paso, State of Texas, then belonging to the State of Texas for the use and benefit of the College of Mines and Metallurgy, and was so taken by the United States Government for the purpose of providing additional lands in its program of enlarging and improving the Military Post or Reservation at Fort Bliss, Texas, as authorized by law, and paid as compensation for the taking of said property the sum of \$7,748.30, principal and interest; and

"WHEREAS, said sum of money was, in accordance with the requirements of law, deposited in the State Treasury and credited to the Permanent Fund of The University of Texas; and

"WHEREAS, the land so taken by the United States Government was the abandoned site of the College of Mines and Metallurgy, which in the establishment of said College

by the Legislature of the State of Texas was donated to the State as a site for said College, and consequently, the College of Mines and Metallurgy, is justly entitled to the use and benefit of the compensation paid by the Government for this property, which makes necessary the appropriation made by this Act.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. There is hereby appropriated out of any moneys in the State treasury not otherwise appropriated the sum of \$7,748.30, or so much thereof as may be necessary, to be expended for the purpose of acquiring additional lands within and adjacent to the present campus of the College of Mines and Metallurgy, a branch of the University of Texas, at El Paso, and the making of improvements thereon. The Board of Regents of The University of Texas is hereby authorized to purchase such property as it may deem proper and necessary within and adjacent to said campus of the College of Mines and Metallurgy and to make such improvements thereon as it may deem proper and necessary and to enter into contracts for these purposes.

"Section 2. The fact that the College of Mines and Metallurgy at El Paso is greatly in need of additional lands and improvements and the fact that said College is entitled to the immediate use and benefit of the money hereby appropriated for said purposes creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.'

"You will observe that this bill says, quote in part: '. . . for the purpose of acquiring additional land within and adjacent to the campus of said College and the making of improvements thereon . . .'

"S. B. No. 110 was reported favorably out of the Committee in the Senate on March 29 and passed the Senate on May 15, 1945. In the meantime, since the Session was drawing near to the close, Senator Winfield submitted a copy of this bill (S. B. No. 110) to the Committee on Claims and Accounts and asked that same be inserted in the Miscellaneous Claims Bill. As I understand it, this request, along with the other requests made to the Committee on

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Claims and Accounts was submitted to the Attorney General's Department (Judge Flewellen acted as adviser to this Committee.) for approval before being inserted in the Miscellaneous Claims Bill; after all claims, including the claim in question, were approved by the Attorney General's Department, Mrs. Edna Rosen, Secretary of the Committee on Miscellaneous Claims and Accounts, typed the Miscellaneous Claims Bill and Judge Flewellen aided her in wording the various claims, including the one in question. It was an inadvertency on some one's part that the phrase 'and the making of improvements thereon' was omitted. This bill (H. B. No. 701-Miscellaneous Claims Bill) was passed in the Senate May 18, 1945, and the House concurred on May 21. In the meantime, S. B. No. 110 was received in the House and passed the House on May 31, 1945.

"On June 4, 1945, H. B. No. 701 was filed by the Governor without his signature. The author of S. B. No. 110, not knowing what the outcome of H. B. No. 701 might be, had not made any effort to withdraw S. B. No. 110; but immediately upon the filing by the Governor of H. B. No. 701, Senator Winfield requested the Governor to veto S. B. No. 110 in view of the fact that there was a duplication since he was under the impression that H. B. No. 701 carried in full the item asked for in S. B. No. 110. The Governor then vetoed S. B. No. 110 at the author's request.

"In view of the fact that S. B. No. 110 was approved by both Houses of the Legislature and was vetoed at the request of the author and since we feel that it was the implied intention of the Legislature in both instances to provide for both the purchasing and the improving of the property, I should like to have an opinion from the Attorney General's Department advising whether expenditures may be made for paving, curbing, and constructing sidewalks around the property in question."

You have correctly quoted the item involved, and it is clear therefrom that the appropriation was made to the permanent fund of the University of Texas, expressly for the purpose of acquiring additional land within and adjacent to

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the present campus of the College of Mines and Metallurgy. The making of improvements upon such land is quite a different thing from the purpose of the appropriation, and cannot be allowed upon any conception of such mistake or inadvertence as mentioned by you. The validity of an act may not be attacked or its plain meaning perverted by matters thus foreign to the legislative processes. Such consideration is beyond the utmost latitude of statutory construction.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Ocie Speer
Ocie Speer
Assistant

OS: AMM

Carl S. Ashley
JAN 31 1946
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY *BWA*
CHAIRMAN