



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

September 17, 1949

Hon. Claud Gilmer, Chairman  
Board for Texas State Hospitals  
and Special Schools  
P. O. Box 486  
Rocksprings, Texas

Opinion No. V-965

Re: Whether supervision  
of construction con-  
tracts should be con-  
tinued by the Board  
of Control or assum-  
ed by the Board for  
Texas State Hospitals  
and Special Schools

Dear Sir:

Your letter of August 24, 1949, requesting  
an opinion reads in part:

"During the current fiscal year the Board of Control, acting through its Division of Design and Construction (Articles 679-687, R.S. 1925) has entered into or will enter into various contracts with various firms for the construction of buildings, installation of elevators, brickwork, painting, etc., at the several institutions which will be governed by the Board for Texas State Hospitals and Special Schools after August 31, 1949. Many of these contracts will not be completed until late in the next fiscal year.

"The question has arisen as to whether the Board for Texas State Hospitals and Special Schools or the Design and Construction Division of the Board of Control should supervise the completion of these contracts which were entered into or will be entered into before September 1, 1949."

There are in all governmental agencies and departments activities which are continuing in nature, as well as those which are non-recurring and which extend over a long period of time. These incomplete operations are assumed by each new official, and completed or super-

vised by him during his term of office. This same principle will apply in the transfer of authority from one agency to another unless the Legislature has expressed a contrary intention.

The Board of Control, through its Division of Design and Construction, executed the contracts in question under the authority of Articles 679-687 V.C.S. Section 2, House Bill 1, Acts 51st Leg., R.S. 1949, ch.316, p. 588, reads in part as follows:

" . . . Effective September 1, 1949, the control and management of, and all rights, privileges, powers, and duties incident thereto including building, design and construction of the Texas State Hospitals and Special Schools which are now vested in and exercised by the Board of Control shall be transferred to, vested in, and exercised by the Board for Texas State Hospitals and Special Schools."

Section 11 of House Bill 1 reads as follows:

"All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only."

These provisions, to the extent of the conflict between the two statutory provisions, operate as an express repeal of the statutes giving the Board of Control authority to execute and supervise the contracts in question and vest that authority, with all rights, privileges, powers, and duties incident thereto, in the Board for State Hospitals and Special Schools. City of Beaumont Independent School District v. Broadus, 182 S.W.2d 406 (Tex. Civ. App. 1944, error ref.), Commercial Credit Co. v. American Mfg. Co., 155 S.W.2d 834 (Tex. Civ. App. 1941, error ref.). Repeal is a question of legislative intent. There are two points which stand as evidence that it was the legislative intent to repeal the authority of the Board of Control and vest it completely in the new Board: (1) the plain unequivocal words of House Bill 1 transferring the authority to the new Board; and (2) the statement in the preamble of House Bill 1 that the inadequacy of the Board of Control's facilities for supervision "now require immediate remedial action."

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The Legislature sought to supply this "remedial action" through the transfer to the new Board of the control and management of the State Hospitals and Special Schools on September 1, 1949, including the supervision of those contracts entered into by the Board of Control before September 1, 1949, but whose completion will be beyond such date.

SUMMARY

House Bill 1, Acts 51st Leg., R.S. 1949, ch. 316 p. 588, transfers as of September 1, 1949, from the Board of Control to the new Board for Texas State Hospitals and Special Schools supervisory powers over construction and maintenance contracts at certain State institutions entered into by the Board of Control before September 1, 1949, but incomplete on that date.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By

*T. E. Taulbee*

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Assistant

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APPROVED:

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