



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

June 16, 1952

PRICE DANIEL
ATTORNEY GENERAL

Hon. Larry O. Cox
Executive Director
Board for Texas State
Hospitals and Special Schools
Austin, Texas Opinion No. V-1462

Re: Necessity for advance approval by the Board of Control on monthly construction estimates and change orders on hospital construction projects.

Dear Sir:

You have requested an opinion on the following questions:

"Does the law require the approval of the Board of Control on our monthly construction estimates?"

"Does the law require the approval of the Board of Control on our change orders in plans and specifications after a contract has been entered into?"

"If our Board follows the customary practice of the Board of Control and advertises for bids in newspapers in the local vicinity of the construction project as well as advertising in construction trade journals and publications, and bids are publicly opened at a designated time and place, and the low bid is accepted by our Board, does the Board of Control have the legal authority to disapprove our action, or:

"Is the Board of Control's right of review and approval only that of assuring that legal and businesslike methods are followed in advertising and accepting bids for construction?"

Prior to the creation of the Board for Texas State Hospitals and Special Schools, the Board of Control had authority to execute and supervise construction contracts for the various institutions now under the management and control of the Hospital Board. Arts. 679-687, V.C.S. On September 1, 1949, these powers were transferred to the Board for Texas State Hospitals and Special Schools. H.B. 1, Acts 51st Leg., R.S. 1949, ch. 316, p. 588 (Art. 3174b, V.C.S.); Att'y Gen. Op. V-905 (1949). In 1950 the Legislature amended the 1949 act to make such construction subject to the review and approval of the Board of Control, where the construction costs are paid out of funds credited to the State Hospitals and Special Schools Building Fund. H.B. 2, Acts 51st Leg., 1st C.S. 1950, ch. 1, p. 1 (Sec. 3, Art. 7047c-1, V.C.S.). Section 3 of Article 7047c-1, V.C.S., provides in part:

"All the funds credited to the State Hospitals and Special Schools Building Fund under this Act are hereby appropriated to the Board for Texas State Hospitals and Special Schools for the purpose of constructing, repairing and equipping such buildings as in the opinion of the Board are necessary to the proper care of those committed or to be committed to such hospitals and special schools according to law. Provided however, the fees paid to an architect shall not exceed six per cent (6%) for the plans, specifications and supervisions of said buildings and all contracts made for and the final acceptance in connection with such construction other than the plans and specifications, shall be subject to the review and approval of the Board of Control." (Emphasis added.)

It is noted that the above quoted provision makes not only the contract but also the final acceptance of the construction work itself subject to "the review and approval of the Board of Control." However, plans and specifications are specifically excepted from its provision. Att'y Gen. Op. V-1172 (1951).

In view of the foregoing, we answer your specific questions as follows:

1. Since the final acceptance of the construction work is subject to the approval of the Board

of Control, it has the power to inspect the work as it progresses. Generally, construction contracts call for monthly payments to the contractor based on the amount of work completed. Therefore, the contractor's monthly construction estimate is subject to the approval of the Board of Control.

2. Changes in plans and specifications are not subject to the approval of the Board of Control. Of course it is understood that material changes in the plans and specifications after a contract has been entered into are not authorized; only minor changes, contemplated by the advertisement, bid, and contract, may be made.

3. Although the contract is subject to the approval of the Board of Control, a legal basis must exist before it may disapprove the action of the Hospital Board in awarding the contract. For example, if the Board of Control has knowledge of facts which show that the person who has been awarded a contract is not a responsible bidder, then it has the power to refuse to approve the contract.

4. Both the contract and construction work are subject to the review and approval of the Board of Control.

SUMMARY

All contracts for the construction of buildings for the various institutions under the management and control of the Board for Texas State Hospitals and Special Schools, and the construction work itself, are subject to review and approval of the State Board of Control. Art. 7047c-1, V.C.S. Plans and specifications for such construction are not subject to review and approval of the State Board of Control. Att'y Gen. Op. V-1172 (1951).

Yours very truly,

APPROVED:

PRICE DANIEL
Attorney General

J. C. Davis, Jr.
County Affairs Division

Mary K. Wall
Reviewing Assistant

By *John Reeves*
John Reeves
Assistant

Charles D. Mathews
First Assistant

JR:mh