



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

July 31, 1953

Hon. Claude Isbell  
Executive Secretary  
Board of Regents  
State Teachers Colleges  
Austin, Texas

Letter Opinion No. MS-75

Re: Present validity of the submitted contract entered into in 1940 between the Board of Regents of the State Teachers Colleges of Texas and the San Marcos Independent School District to make the San Marcos public schools the laboratory school of Southwest Texas State Teachers College.

Dear Mr. Isbell:

You have submitted to this office a "teaching laboratory" contract made in 1940 between the Board of Regents of the State Teachers Colleges and the Board of Trustees of the San Marcos Independent School District. You desire our opinion as to the present validity and binding effect of the contract. The applicable portions of the contract provide:

"3. . . . The duration of this contract shall be indefinite except under the following conditions:

- (1) If either contracting party wishes to discontinue the operation of the cooperative contract or any part thereof an officially signed statement of such desire shall be filed with the other contracting party two full school sessions in advance of the proposed discontinuance. Such official notice shall be construed as bringing about the dissolution of the contract at the close of the two year period of notice.

"7. The college shall equip and maintain the Junior-Senior High School Building and the Elementary School Building. This service shall include:

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- (1) Upkeep of the building, janitor service, heating, lighting, crayon, erasers, and toilet supplies.
- (2) Equipment of classrooms and laboratories in the Junior-Senior High Building and in the Elementary School Building with all necessary permanent non-educational equipment. . . .

"9. For the use of the college facilities enumerated in this contract, the San Marcos School Board shall pay the Southwest Texas Teachers College Eighteen Hundred Dollars (\$1800.00) per year. Said amount to be paid at the rate of Two Hundred Dollars (\$200.00) per month, beginning October 1, each year."

Article 2647c, Vernon's Civil Statutes, grants authority to the Board of Regents of the State Teacher Colleges and the trustees of any independent school district to enter into a "teaching laboratory" contract with each other. Att'y Gen. Op. V-1333 (1951). The Board of Regents, as an agency of the State, may make only such contracts on behalf of the State as it has been authorized by law to make. Fort Worth Cavalry Club v. Sheppard, 125 Tex. 339, 83 S.W.2d 660 (1935). Neither the Constitution nor the statutes of Texas provide for the length of term for which the contract herein discussed may be made. However, two provisions of the Constitution vitally affect this contract. Section 49 of Article III prohibits the creation of any debt by or on behalf of the State. Section 6 of Article VIII provides that no appropriation of money may be made for a longer term than two years.

Where some person or board is appointed by law as the agent of the State for the purpose of letting contracts, the law under which such person or board acts is as much a part of the contract as if it were formally written therein. State v. Perlstein, 79 S.W.2d 143 (Tex.Civ.App. 1934, error dismissed); Att'y Gen. Op. 0-2261 (1940).

The consideration moving from the Board of Regents is provided in the 1953 Appropriation Act (Chapter 81, Acts of the 53rd Legislature, 1953, p. 127, 323). The local income of the Southwest Texas State Teachers College is likewise appropriated from the State Treasury by this Act (Subsection m of Section 17 of Article V, p. 338). Leaving the control of these funds solely within the hands of the Board does not render the funds any less State money, subject to appropriation. Att'y Gen. Op. 0-2616 (1940).

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The contract creates a debt against the State (by its agency) to be paid from future appropriations, and is void for that reason. The contract is a continuing one unless discontinued in the specified manner. If the school Boards desire to continue the "teaching laboratory" relationship this contract may be corrected by changing Section 3 to provide that the duration of the contract shall be two years, except that at the end of the period the parties may by agreement extend it for a like period.

The submitted contract relating to a "teaching laboratory" for an indefinite period is void inasmuch as it violates Section 49 of Article III and Section 6 of Article VIII of the Texas Constitution by creating a debt against the State to be paid out of future appropriations.

Yours very truly,

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Attorney General

By  
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