



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 4, 1957

Mr. Raymond W. Vowell,
Acting Executive Director,
Board for Texas State Hospitals
and Special Schools,
Capitol Station,
Austin, Texas

Opinion No. WW-271

Re: Can monies be expended
from the \$2,269,490.00
appropriated by House
Bill 133, for the purchase
of land upon which to
build a school for the
mentally retarded?

Dear Mr. Vowell:

You have requested an opinion of this Department on
the following question:

"Can monies be expended from the
\$2,269,490.00 appropriated by House
Bill 133, for the purchase of land upon
which to build a school for the mentally
retarded?"

House Bill 653, 55th Legislature, Regular Session,
1957, provides for the establishment of a school for mentally
retarded and states in part as follows:

"Section 1. . . .

"The Board for Texas State Hospitals
and Special Schools shall select a site for
said school, and the Board, in selecting such
site, shall make such selection with a view
to its accessibility and convenience to the
greatest number of inhabitants, and the same
shall contain sufficient land and have utili-
ties readily available. Said Board shall take
title to the land so selected by them in the
name of the State of Texas for the use and
benefit of said school; provided, however,
that the Attorney General's Department shall
first approve the title to the land so selected
by the Board.

Mr. Raymond W. Vowell, Page 2 (WW-271).

"Sec. 2. . . . said Board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act."

During the same Session, by House Bill 133, 55th Legislature, Regular Session, 1957, an appropriation was made "for constructing, equipping, furnishing, and paying architect fees" for this project. In the same appropriation bill, Section 9d, page 928, a special provision provides as follows:

"d. No money appropriated by this Article may be spent for planning or constructing new or additional institutions, or for the purchase of sites therefor, without specific authorization of the Legislature. All institutions shall be kept where they are located by the Legislature, and all new buildings to be constructed shall be on these sites unless otherwise specifically authorized by the Legislature."

Section 1 of House Bill 653, supra, patently and expressly gives the Board for Texas State Hospitals and Special Schools the power to "select a site for said building". It further expressly gives the Board the authority to "take title to the land so selected". These provisions must of necessity envision the purchase of land on which the building is to be constructed. It follows that the power to select a site for a school and to take title to the land so selected also includes the power to expend purchase price money to acquire title to the site so selected. Any contrary holding would, we believe, defeat the expressed intent of the Legislature.

If, however, any doubt still remains that the authority to purchase the land in question is not expressly granted by the language of House Bill 653, we refer to the case of Moon v. Allred, 277 S.W. 787 (Tex. Civ. App., 1925). It was therein held that the power given to a Commissioners Court under Article 610, Vernon's Civil Statutes, 1925, to issue bonds for erection of a courthouse and jail, necessarily implied the power to issue bonds to purchase the site and equipment therefor. By the same reasoning, we are of the opinion that the authority to "select a site" and "take title to the land so selected" for a school for the mentally retarded necessarily implies the authority to expend money to purchase land upon which to build the school.

Mr. Raymond W. Vowell, Page 3 (WW-271).

We are, therefore, of the opinion that monies can be expended from the \$2,269,490.00 appropriated by House Bill 133 for the purchase of land upon which to build a school for the mentally retarded.

SUMMARY

Monies can be expended for the school from the \$2,269,490.00 appropriated by House Bill 133, for the purchase of land upon which to build a school for the mentally retarded.

Yours very truly,

WILL WILSON
Attorney General of Texas

By *B. H. Timmins, Jr.*
B. H. Timmins, Jr.
Assistant

BHT:pf

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

J. C. Davis, Jr.

W. V. Geppert

Wayland C. Rivers, Jr.

REVIEWED FOR THE ATTORNEY GENERAL

By: James N. Ludlum.