



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

November 12, 1957

Honorable Raymond W. Vowell  
Acting Executive Director  
Texas State Hospitals and  
Special Schools  
Austin, Texas

Opinion No. WW-319

Re: Whether or not, under Article 3174b, Section 2, Vernon's Civil Statutes, the Board for Texas State Hospitals and Special Schools may sell surplus property, and whether the Board may transfer property from one institution to another.

Dear Mr. Vowell:

You have submitted for our opinion the following questions which we quote from your letter of September 24, 1957:

"(1) May this Board sell surplus property or supplies of institutions? (This type of property consists of obsolete, excess, or junk items which are not needed or desired by other institutions.)

"(2) May this Board transfer, with or without reimbursement, surplus property or supplies from one institution to another, under its jurisdiction?"

We have assumed in answering your request that your first question inquires whether the Board for Texas State Hospitals and Special Schools may dispose of obsolete and junk items to the public by advertisement and bids, as opposed to a transfer of the goods to another State agency.

We have been referred to the provisions of Article 3174, Section 2, Vernon's Civil Statutes, which grants to the Board for Texas State Hospitals and Special Schools the following powers:

". . . 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 State Board of Control shall be transferred to, vested in, and exercised by the Board for Texas State Hospitals and Special Schools. Provided, however, that the Board of Control shall continue to handle purchases for such institutions in the same manner as they do for other State agencies."

At the time this statute was enacted, Articles 640, 666 and 666-1, Vernon's Civil Statutes, were the statutes under which the State Board of Control exercised its power of selling and transferring surplus properties and supplies. These Articles provided as follows:

Article 640:

"When any institution accumulates an amount of supplies on hand in excess of its needs, and another institution is in need of such supplies, the Board shall be authorized to transfer any of such supplies from the institution having such excess to such institution in need of such supplies, and the debit and credit shall be made on the basis that such supplies can be purchased in the open market at the time of the transfer, when it is less than the cost under the general contract for such supplies for the fiscal year, otherwise the debit and credit shall be made on the basis of the general contract price for that year."

Article 666:

"All personal property belonging to the State, regardless of where it is located, under the control of any State Agency, with the exception of State Eleemosynary Institutions, Colleges, Institutions of Higher Learning and the Texas Prison System, when it has become unfit for use, or be no longer needed, shall be placed under the jurisdiction of the State Board of Control, and the State Board of Control may sell such property after advertising it no less than four (4) days in a newspaper in the county wherein the property is located, notice of sale, setting out the time and place of sale and the property to be sold, shall be posted in three (3) public places, one being in the court house in the county wherein the property is located. Provided, however, that if the estimated value of such personal property is less than One Hundred (\$100.00) Dollars and not sufficient to justify the cost of advertisement in newspapers as outlined above, the State Board of Control may sell such property in any manner that it deems for the best inter-

est of the State. The money derived from the sale of such property, less the expenses of advertising the sale, shall be deposited in the State Treasury, to the credit of the appropriation of the State Agency which transferred such property to the State Board of Control for disposition. The credit to the appropriation of such State Agency shall be made to the appropriation for such State Agency from which such property could be purchased.

"The State Board of Control shall make a written report to the Comptroller after each sale. The report shall include the following items:

"(1) Name of the newspaper and the dates of advertisement of notice of sale; or if posted, the date and place of posting;

"(2) Each article received;

"(3) The price for which each article was sold;

"(4) The name and address of the person to whom each article was sold.

"This report shall be signed by the State Board of Control and a member of the State Agency having control of the property before sale."

Article 666-1:

"Any property which has become unfit for use, or no longer needed, when placed under the jurisdiction of the State Board of Control by any State Agency, including State Eleemosynary Institutions, Colleges, Institutions of Higher Learning and the Texas Prison System, may be transferred by the State Board of Control to any institution or State Agency in need of same, and the proper debit and credit shall be made on the basis that such property can be purchased in the market at the time of the transfer, if a market exists, and if not, at its actual or intrinsic value as set by the State Board of Control. The State Comptroller shall, upon information furnished by the State Board of Control, debit the appropriation of the State Agency receiving such transferred property, from which such property could have been purchased, and credit the appropriation, from which such property could have been purchased, to the State Agency

that transferred such property to the State Board of Control; provided, however, that the provisions of this section shall not apply to property acquired from the Federal Government and transferred from one Eleemosynary Institution to another and the sale of supplies manufactured by the Texas Prison System; and provided further, that any State Agency may offer such property which has become unfit for use or no longer needed as a trade-in on new property of the same type when such exchange is for the best interest of the State."

Through the provisions of Article 3174b, the Board for Texas State Hospitals and Special Schools acquired the rights and powers, insofar as the property of such Board was concerned, which had formerly been vested in the State Board of Control. Thus, it acquired the power to transfer excess supplies from one institution to another when the proper bookkeeping procedures were followed. Articles 640, 666-1, Vernon's Civil Statutes.

Article 666 grants to the Board of Control the authority to sell personal property when the same is unfit or not needed, but specifically exempts the personal property under the control of the State Eleemosynary Institutions. Therefore, it is our further opinion that the Texas State Hospitals and Special Schools did not acquire the right or power to sell unfit or unneeded personal property through Article 3174b, Vernon's Civil Statutes.

Therefore, we conclude that under Article 3174b the Board for Texas State Hospitals and Special Schools acquired the right to transfer surplus personal property or property not needed by one institution to another institution, provided the accounting debits and credits prescribed by Articles 640 and 666-1 were followed. It is our further conclusion that the Board for Texas State Hospitals and Special Schools did not acquire the right to sell unfit or unneeded personal property.

In 1957 the Legislature enacted the State Purchasing Act of 1957, being Senate Bill 189, Acts 55th Legislature, R.S. 1957, Ch. 304, p. 739, and the Salvage and Surplus Act of 1957, being Senate Bill 190, Acts 55th Legislature, R.S. 1957, Ch. 414, p. 1247. In Senate Bill 189 the Legislature specifically repealed Article 640, and Senate Bill 190 specifically repealed Article 666-1, Vernon's Civil Statutes. The question presented is whether the powers granted the Board for Texas State Hospitals and Special Schools by the provisions of Article 3174b, through reference to the provisions of Articles 640 and 666-1 were affected or made invalid by the repeal of Articles 640 and 666-1 by the Acts of the 55th Legislature above mentioned.

It is our opinion that the effect of Article 3174b was to describe the powers granted to the Board for Texas State Hospitals and Special Schools by transferring to such Board the powers previously possessed by the State Board of Control under Articles 640 and 666-1, Vernon's Civil Statutes. Accordingly, the vitality of the powers of the Board for Texas State Hospitals and Special Schools depends only upon the effectiveness of Article 3174b, and the repeal of Articles 640 and 666-1 will not affect the powers granted by Article 3174b.

In 82 C.J.S. Statutes, § 301, page 517, the rule is stated as follows:

"A statute which refers to and adopts the provisions of a prior statute is not repealed or affected by the subsequent repeal of the prior statute. In such case, the incorporated provisions, considered as a part of the second statute, continue in force, and are unaffected by the repeal. . . ."

It should be pointed out that the Salvage and Surplus Act of 1957, supra, specifically exempted only the State "eleemosynary institutions". This term was defined in Opinion WW-251, and does not include the Board for Texas State Hospitals and Special Schools per se. Therefore, the transfer of surplus property may be made from one institution to another, but not from the Board itself to an institution, or vice versa, since the property of the Board is covered by the Salvage and Surplus Act of 1957, and the powers of the Board are curtailed to that extent.

In summary and in answer to your first question, it is our opinion that the Board for Texas State Hospitals and Special Schools did not acquire the power to dispose of unwanted property, but the Board may transfer surplus property with the reimbursement and accounting transactions provided by Article 640 and Article 666-1, between eleemosynary institutions as that term is defined by Opinion WW-251. However, the Board for Texas State Hospitals and Special Schools would not be authorized to transfer surplus property to any other agency or department of the State Government since all other departments are covered by the terms of Senate Bill 190. It, being the latest enactment and the expression of the Legislature's intent, will control, and by its terms repeals all laws or parts of laws in conflict with its terms.

Honorable Raymond W. Vowell, page 6 (WW-319)

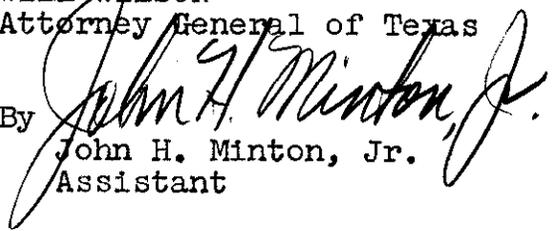
S U M M A R Y

The Board for Texas State Hospitals and Special Schools may transfer surplus property between those institutions under the provisions of Article 3174b. This power was not affected by the enactment of Senate Bills 189 and 190, Acts 55th Legislature, R.S. 1957. The Board for Hospitals and Special Schools does not have the power to sell or dispose of worn-out or unwanted property to the public.

Very truly yours,

WILL WILSON  
Attorney General of Texas

By

  
John H. Minton, Jr.  
Assistant

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APPROVED:

OPINION COMMITTEE  
Beo. P. Blackburn, Chairman

Wallace Finfrock  
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Richard Stone

REVIEWED FOR THE ATTORNEY GENERAL

BY: James N. Ludlum