



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

November 21, 1958

Mr. William J. Burke  
Executive Director  
State Board of Control  
Austin, Texas

OPINION NO. WW-523

Re: Under the terms of Senate Bill 190 are improvements (houses, outbuildings, etc.) acquired by the Highway Department in connection with the right-of-way building program, correctly considered as surplus property and related questions.

Dear Mr. Burke:

In your letter attaching a copy of a report prepared by Mr. Don Cavness, your Chief Clerk, you requested our opinion on various related questions under the terms of Senate Bill 190. We interpret your request to refer to Senate Bill 190, Acts of the 55th Legislature, Chapter 414, Page 1247, Codified as Article 666, Vernon's Annotated Civil Statutes, known as the Salvage and Surplus Act of 1957, and will proceed on this assumption. Your letter in part reads as follows:

1. "Under the terms of the Senate Bill 190 are improvements (houses, out buildings, etc,) acquired by the Highway Department in connection with the right of way and Highway Building program correctly considered as surplus property? The language of Section Two of Senate Bill 190 appears to indicate items which are classified as personal property of State agencies which appear on the inventory records of the various agencies are different (in nature) from the improvements listed above.
2. "Should the Board of Control under the terms of the Highway program attempt to handle the sale of improvements acquired in connection with the right of way under the terms of Senate Bill 190? Your attention is called to Paragraph 3 and 5 of the attached report.

3. "If, under the terms of Senate Bill 190, the Board of Control should be the one to handle the disposal of such acquired improvements, can the Board of Control, in the interests of expediency, accuracy, and control delegate the authority for the disposal of such improvements to the Highway Department?"

Section 2 of the Act reads as follows:

"It is the purpose of this Act to save the State money and recover as much money as possible for the State by giving the Board of Control authority to implement the transfer and use the best means of sale and disposal of all serviceable state personal property no longer needed by the state agencies, and authority to use the best means for the sale and disposal of all state-owned personal property that is depleted, worn out, damaged or consumed to the extent that it is no longer usable." (Emphasis Added)

Section 3 of the Act reads in part as follows:

" (d) "Property" means personal property, and does not mean real property, or any interest in real property. Personal property affixed to real property may be sold under this law if its removal and disposition is to carry out a lawful objective under this law or any other law. (Emphasis Added)

" (e) "Surplus property" means any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs. Surplus property may be used or new, but possesses some usefulness for the purpose for which it was intended or for some other purpose."

In answer to your first question, it is our opinion that the improvements mentioned in your letter are to be considered as surplus property and disposed of in accordance with provisions of this Act. Sections 3 (d) and (e) of the Act clearly reflect the legislative intent to bring within this Act such improvements affixed to realty when their removal or disposition is to carry out a lawful objective under any law. These improvements have been acquired by the Highway Department under their delegated authority to construct and maintain highways and

when no longer required for their present and foreseeable needs they must be disposed of as directed by this Act.

In answer to your second question, it is our opinion that it is the Board of Control's duty to dispose of these improvements in accordance with law once the Highway Department notifies them that the improvements are no longer needed. While disposal of these improvements may present certain difficulties to the Board, we believe that the Act clearly sets out the procedures to be followed in disposing of such improvements.

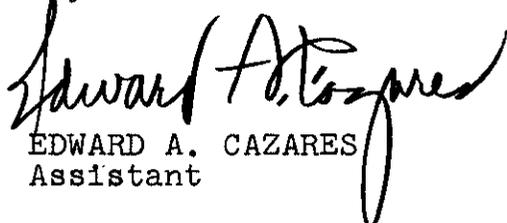
In answer to your third question, we are of the opinion that the Board of Control can delegate the authority for the disposal of such improvements to the Highway Department under the rules and regulations set up by the Board. This authority is clearly reaffirmed by Section 11 of the Act which states "it is the intent of the Legislature that the Board may authorize an agency to dispose of surplus or salvage property where the agency demonstrates to the Board its ability to make such disposition under the rules and regulations set up by the Board, as provided for herein...."

#### S U M M A R Y

Improvements (houses, out buildings, etc.) acquired by the Highway Department in connection with right-of-way and highway building programs are correctly considered as surplus property under the terms of the Salvage and Surplus Act and the Board of Control must dispose of these improvements in accordance with this Act once the Highway Department notifies them that these improvements are no longer needed. The authority for the disposal of such improvements can be delegated to the Highway Department.

Yours very truly,

WILL WILSON  
Attorney General

By:   
EDWARD A. CAZARES  
Assistant

APPROVED:

OPINION COMMITTEE

George P. Blackburn, Chairman  
Ernest John Flowers  
Houghton Brownlee, Jr.

REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert