



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

January 5, 1961

Mr. H. R. Nieman, Jr.  
Executive Director  
State Building Commission  
Austin, Texas

Opinion No. WW-978

Re: Whether contracts for expenses for attorney's fees, fees for expert witnesses and court reporter fees incurred in connection with a condemnation suit, constitute a contract or obligation of a continuing nature legally payable from funds beyond the expiration date of the appropriation provided for the acquiring of the property involved.

Dear Mr. Nieman:

You have requested an opinion from this office to determine whether the Building Commission has the authority to contract for attorney's fees, fees for expert witnesses, and court reporter fees which would be incurred in connection with condemnation suits to secure building sites for State buildings, and whether such contracts would constitute an obligation of a continuing nature which would be legally payable from appropriations beyond the expiration date of the appropriation. You have asked specifically about a proposal submitted to the Building Commission by Mr. Harold Legge, dated December 16, 1955, which stipulated the charges for preparation of and rendition of court testimony on a certain list of properties which would be the basis of a condemnation suit, and of the letter from the State Building Commission to Mr. Legge, dated December 19, 1955, accepting and agreeing to the charges stipulated in his letter to determine whether this was a binding contract under the conditions set forth in your first question. Section 5 of Article 678m, Vernon's Civil Statutes, provides as follows:

"Sec. 5. The Commission is authorized to take any action and enter into any contracts necessary to provide for the obtaining of sites and the planning, designing and construction of the buildings and memorials provided for by

Section 51-b, Article III of the Constitution, and the Commission is also authorized to take any action and enter into any contracts to obtain sites which it deems necessary in order to provide for the orderly future development of the State Building Program which is contemplated by this Act, insofar as appropriations permit . . ."

As can be seen from the above-quoted section of the statute, it is clear that the Commission can enter into contracts for attorney's fees, fees for expert witnesses, and court reporter fees which would be incurred in securing the building sites for State buildings.

Section 6 of Article VIII of the Texas Constitution provides "no money shall be drawn from the treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years . . .," but prior Attorney Generals' Opinions Nos. WW-40, V-1397 and V-1535a make it clear that this provision of the Constitution does not apply to an obligation contracted for during the period of the appropriation. It is our opinion that the Building Commission has the authority to enter into a contract for the listed expenses which would be a binding obligation of a continuing nature and would be payable from funds beyond the expiration date of the appropriation provided for acquiring the property involved.

The only thing to be determined, then, is whether the Building Commission actually entered into a contract with Mr. Legge for the services described. In our opinion, the letter of Mr. Legge, dated December 16, 1955, constituted an offer by Mr. Legge to carry out proposals made in that letter at a certain price and the Building Commission, by its letter of December 19, 1955, accepted the proposals made by Mr. Legge and, by this acceptance, entered into a contract which was binding on both parties. The appropriation under which the contract was made (Section 18, Senate Bill 134, Acts of the Fifty-fourth Legislature, Regular Session, 1957, Chapter 514, Page 1301) has been reappropriated for the same purpose through the years, the last appropriation being House Bill 4, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, Chapter 23, Page 513. This being the case, the Comptroller is authorized to make payments for these services subject to the restrictions of Article 4357, Vernon's Civil Statutes. Naturally no such payment could be made from present appropriations without the contract being made during the time an appropriation was in effect.

S U M M A R Y

The State Building Commission is authorized to enter into contracts for attorney's fees, fees for expert witnesses and court reporter fees to be incurred in connection with condemnation suits to obtain building sites for State buildings which would constitute a contract or obligation legally payable from funds beyond the expiration date of the appropriation provided for the acquiring of the property involved, subject to the limitations of Article 4357, Vernon's Civil Statutes.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
John C. Steinberger  
Assistant

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APPROVED:

OPINION COMMITTEE  
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REVIEWED FOR THE ATTORNEY GENERAL

BY: Morgan Nesbitt