



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

June 10, 1964

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

Opinion No. C-265

Re: Whether the appropriation  
to the Board for Texas  
State Hospitals and Special  
Schools, contained in the  
General Appropriation Bill  
can be used to purchase  
land for the stated pur-  
pose.

Dear Mr. Vowell:

You have requested an opinion on whether the appropriation to the Board for Texas State Hospitals and Special Schools, contained in the General Appropriation Bill can be used to purchase land for the purpose of expanding the Lufkin State School and its sewage treatment plant. In response to our request for additional information you have advised us that the Board intends to expend approximately \$10,000 for the acquisition of necessary land to carry out the proposed expansion.

Section 1, Article 3263d of Vernon's Civil Statutes states as follows:

"Should the Board for Texas State Hospitals and Special Schools acquire from the United States of America the property and facilities located near Lufkin, Texas, and known as the Lufkin Air Force Base, said Board shall establish and maintain an additional school for the diagnosis, special training, education, supervision, treatment, care and control of mentally retarded persons of this state. After the establishment of said school, it shall be known as the 'Lufkin State School.'"

Said land has been acquired by the Board and the School has been established.

Section 2, Article 3263d of Vernon's Civil Statutes states as follows:

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"Within the limits of appropriated funds the Board is further authorized to acquire by eminent domain, purchase or gift, additional land adjacent to the facilities so acquired from the United States Government for the purpose of enlarging said school." (Emphasis added).

An examination of the clear and unambiguous wording of the aforesaid proviso reveals that the Board has the express power, "Within the limits of appropriated funds," to "purchase" additional land for the express "purpose of enlarging said school."

The current appropriation for Lufkin State School as stated in House Bill No. 86, Acts 58th Legislature 1963, Regular Session, Chapter 525, Page 1412 is as follows:

"1. Expansion to include 800 Added Beds .....2,000,000"

Said appropriation is for the express purpose of expanding, or enlarging, the School to include additional beds. An express power is necessarily accompanied by implied powers. This was clearly explained by the Texas Supreme Court in Terrell v. Sparks, 104 Tex. 191, 135 S.W. 519, 521 (1911), wherein the Court held:

"Whenever a power is given by statute, everything necessary to make it effectual or requisite to attain the end is implied. It is a well-established principle that statutes containing grants of power are to be construed so as to include the authority to do all things necessary to accomplish the object of the grant. The grant of an express power carries with it by necessary implication every other power necessary and proper to the execution of the power expressly granted. Where the law commands anything to be done, it authorizes the performance of whatever may be necessary for executing its commands." (Emphasis added).

Further, in this regard, attention is called to the case of Moon v. Alred, 277 S.W. 787, 789 (Tex.Civ.App. 1925, error dismissed w.o.j.), wherein the Court stated:

"While no Texas case has been found on all fours, as to the exact state of facts, with the case at bar, in other jurisdictions the question has been directly decided. In Territory v. Baxter, 16 Okla. 359, 83 P. 709, the Supreme Court of Oklahoma, in construing a statute identical in substance with ours, held that the power given a

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commissioners' court to issue bonds to build a jail necessarily implied the power to issue bonds to purchase a site therefor, and that power to issue bonds to build a courthouse likewise implied power to issue such bonds to equip the same. (Emphasis added).

Therefore, the express powers concerning expansion, given to the Board by the aforesaid statute and appropriation, give the Board the implied power to use a portion of the appropriated funds for the express purpose of "purchasing" land necessary for the expansion prescribed in the quoted appropriation.

#### S U M M A R Y

Section 2, Article 3263d of Vernon's Civil Statutes gives the Board the express power to use appropriated funds for the purchase of additional land "for the purpose of enlarging said School." The current appropriation for said School provides \$2,000,000.00 for expansion "to include 800 Added Beds." Under the well recognized doctrine that express powers carry by necessary implication every other power necessary and proper to the execution of the powers expressly granted, the Board is authorized to expend a portion of the aforesaid appropriated funds for the purchase of a site upon which the Board can carry out its authorized expansion.

Yours very truly,

WAGGONER CARR  
Attorney General

By: *Roy B. Johnson*  
Roy B. Johnson  
Assistant

RBJ:sj:mkh

APPROVED:  
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL  
BY: Stanton Stone