



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

November 27, 1967

Hon. Graves W. Landrum
Vice Chancellor for Adminis-
tration
Office of the Chancellor
The University of Texas
System
Austin, Texas

Opinion No. M-160

Re: Interagency contracts
between the University
of Texas and the Coordi-
nating Board, Texas
college and university
system for the utiliza-
tion of certain data
processing equipment.

Dear Mr. Landrum:

Your request for an opinion reads, in part, as follows:

". . .

"Chapter 325, page 685, 59th Legislature, 1965, R.S., provided for the development and management of automatic data processing systems in state agencies in an efficient and economical manner. The Coordinating Board, Texas College and University System, and The University of Texas at Austin established a data communication system between the two agencies which was evidenced by an Interagency Contract numbered IAC (66-67) - 338 and approved by the State Board of Control on February 15, 1967.

"Subsequently, Interagency Contracts numbered IAC (68-69) - 007 and IAC (68-69) - 008 were executed by the parties and duly approved by the State Board of Control on July 24, 1967, in furtherance of a more efficient data system and in conformity with the expressed legislative intent referred to above. Copies of the three agreements are enclosed for your information.

"We understand that payment under the approved interagency contracts will be deferred until the validity of such arrangement to furnish data equipment is approved by you. As you are aware, The University of Texas at Austin changed from the IBM 1401 System to the IBM 360 Series System in the fall of 1966. The University has cooperated with other state agencies in the use of University data processing equipment for official use on a time available basis. The Coordinating Board has been a user of the data equipment under the above conditions. After the transition period the University continued to rent the IBM 1401 in order to provide continued backup for the new system and continued use by the Coordinating Board. The Board was desirous of updating its equipment for greater capabilities and more efficient data processing at a lesser cost. Whereupon, to be compatible with the IBM 360 Series equipment located at the University, it was agreed that rental of IBM 360-20 Series equipment to be located at the Coordinating Board would be the best ultimate arrangement. The four months' rental on the IBM 1401 was continued while awaiting the installation of the IBM 360-20. In furtherance of this arrangement contracts were executed, orders for the rental of said equipment were issued, and the required approvals obtained. Under the arrangement The University of Texas at Austin submitted orders for the rental of IBM 360-20 equipment, thereby providing compatibility with the new IBM 360 Series, particularly the IBM 360-40. It was assumed that the joint use of equipment, people, services and programs to increase efficiency would be in conformity with Article 4413(32), Vernon's Civil Statutes, which provides that a state agency may contract for the furnishing of necessary technical services, services of employees, and the services of materials and equipment.

"Based upon the above facts, we would appreciate your advice as to the following question:

"Are Board of Control approved Interagency Contracts numbered IAC (66-67) - 338, IAC (68-69) - 007 and IAC (68-69) - 008 by and between The University of Texas at Austin and the Coordinating Board, Texas College and University System, which provide an arrangement for the utilization of certain data processing equipment for the benefit of the State of Texas, valid obligations upon which the State Comptroller can issue warrants in payment of such services?"

Under the contract, the University of Texas as the performing agent has agreed to provide certain data processing systems and the Coordinating Board, Texas College and University System as the receiving agent has agreed to pay to the University of Texas the cost of such services. The interagency contracts referred to in your request have been approved by the State Board of Control.

Section 3 of Article 4413(32), Vernon's Civil Statutes, provides in part:

"Any State agency may enter into and perform a written agreement or contract with other agencies of the State for furnishing necessary and authorized special or technical services, including the services of employees, the services of materials, or the services of equipment. The actual cost of rendering the services, or the nearest estimate of the cost that is practicable, shall be reimbursed, except in the case of service rendered in the fields of national defense or disaster relief, or in cooperative efforts, proposed by the Governor, to

promote the economic development of the State. . . ." (Emphasis added.)

In construing the provisions of Article 4413(32), it was stated in Attorney General's Opinion S-138 (1954):

"It should be noted that the three types of authorized services - services of employees, services of materials, and services of equipment - are listed disjunctively. Thus, a contract may be for each type separately or for any combination of the three. Looking to the complete language of the statute, we think the term 'furnishing services' is used in the broad sense of making the particular commodity (labor, materials or equipment) available for the benefit or use of the receiving agency instead of in the narrow sense of performance of labor or useful work. It is our opinion that either materials or equipment may be furnished without any further attendant 'services'."

In answer to a similar question, it was held in Attorney General's Opinion C-78 (1963):

"Section 6 of Article 4413(32), Vernon's Civil Statutes, reads as follows:

"'Payments for such services by a receiving agency shall be made from the appropriation items or accounts of the receiving agency from which like expenditures would normally be made, based upon vouchers drawn for this purpose by the receiving agency payable to the furnishing agency. . . .'

"It is the opinion of this office that the State Building Commission has the power and authority under Section 3 of Article 4413(32) to enter into agreements or contracts with other State agencies whereby the Commission performs services for the other agency. The services rendered by the State Building

Commission would be 'special' or 'technical services' within the meaning of Article 4413(32).

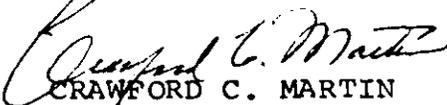
"In regard to the specific problem of the installation of the IBM machine, the Building Commission and the Department of Public Welfare may enter into a contract whereby the Building Commission will draw the plans and specifications for the installation and oversee the actual installation. The Building Commission could subcontract the actual installation work since this building is still under the control and management of the Commission. The contract would be subject to the limitations on interagency contracts and agreements contained in Article 4413(32), and payment would have to be made in accord with Section 6 of Article 4413(32) as quoted above."

Applying the foregoing principles to the interagency contracts in question, we note that the equipment in question is for the joint use of data processing, services and programs to increase efficiency, and thus is in conformity with the provisions of Article 4413(32). You are, therefore, advised that the interagency contracts referred to in your request are valid and constitute valid obligations upon which the Comptroller of Public Accounts may issue warrants in payment of the services rendered pursuant to the contract.

S U M M A R Y

Under Article 4413(32), Vernon's Civil Statutes, the University of Texas may enter into interagency contracts with the Coordinating Board, College and University System whereby it will furnish the Coordinating Board at cost certain data processing equipment and services.

Yours very truly,


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APPROVED:
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