



Texas Military Facilities Commission

2200 West 35th Street, Building 64 Austin, Texas 78703-1222

www.tmfcs.state.tx.us

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DEC 16 2003

December 12, 2003

The Honorable Gregg Abbott
Attorney General of Texas
Attention: Nancy Fuller, Chief
Opinions Committee
Price Daniel Building, 6th Floor
Austin, TX 78701

CERTIFIED MAIL, RETURN RECEIPT
REQUESTED # 7022 2410 0004 8768 2489

OPINION COMMITTEE

FILE # ML-43379-03
I.D. # 43379

RQ-0147-GA

Dear General Abbott:

The Texas Military Facilities Commission (formerly the Texas National Guard Armory Board) at its December 5, 2003 Commission meeting authorized the undersigned to request this opinion relating to its construction, repair, and maintenance authority relative to that of the Adjutant General's Department. The questions presented affect the public interest.

JM-885 issued by your office in 1988, noted at page 4 that the Armory Board had express power to construct buildings for the National Guard. The Opinion observed, however, that the Armory Board's authority was "not necessarily exclusive" and concluded that the Adjutant General's broad powers "include implied authority to build, maintain, and repair buildings necessary to carry out his responsibilities." (Emphasis supplied.)

When JM-885 was issued, the Armory Board's express construction authority was found in Government Code, Section 435.013 which read as follows:

The Armory Board is a public authority and a body politic and corporate and has all powers necessary for the acquisition, construction, rental, control, maintenance, and operation of Texas National Guard or Texas State Guard armories, including all property and equipment necessary or useful in connection with the armories.

In 1997, the 75th Legislature, Regular Session, enacted SB 352, the Texas National Guard Armory Board's Sunset Bill.¹ That bill, among other things:

- changed the Board's name to the Texas Military Facilities Commission;
- changed the composition of the Commission from three National Guard members and three public members to one senior member of the Texas National Guard and five public members; and
- amended section 435.013, in part, by adding the following language.

¹See Government Code Chapter 325.

(a) The commission is the **exclusive** authority for the construction, repair, and maintenance of National Guard armories, facilities, and improvements owned by the state located on commission property. (Emphasis supplied.)

The Bill Analysis for the Committee Substitute for SB 352 on pages 1 and 4 states that the bill "clarifies that the TNGAB (commission) is the sole authority for the construction, maintenance, repair and disposition of National Guard facilities located on TNGAB (commission) property."

Question 1: Did the 1997 amendment to section 435.013 quoted above effectively repeal that portion of JM-885 which concluded that the Adjutant General possessed "implied authority to build, maintain, and repair buildings necessary to carry out his responsibilities?"

Please address Question 2 only if you provide an affirmative response to Question 1.

HB 3042 enacted by the 78th Legislature, Regular Session, imposes upon the Building and Procurement Commission (BPC) the duty to provide facilities management services, with certain exceptions, in relation to all state agency facilities in Travis County or a county adjacent to Travis County. The BPC's duty does not extend to "military facilities." Government Code, Section 2165.007(b)(2).

Question 2: Does the exclusion of military facilities from the BPC's duty imposed by HB 3042 expressly or impliedly vest in the Adjutant General's Department the authority to enter into construction, repair, or maintenance contracts on property described in Section 435.013(a)?

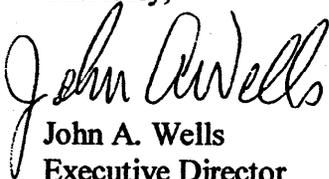
The following entities may be interested in this request:

Lieutenant General Wayne D. Marty
Adjutant General of Texas
P. O. Box 5218
Austin, Texas 78763

Colonel Sheila Hooten
United States Property and Fiscal Officer of Texas
P. O. Box 5218
Austin, Texas 78763

If I can provide you with additional information, please contact me by telephone at 782-6905.

Sincerely,



John A. Wells
Executive Director
Texas Military Facilities Commission