



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

This Opinion
Modifies Opinion

WW-119

November 26, 1958

Honorable Price Daniel
Governor of Texas
Capitol Station
Austin, Texas

Opinion No. WW-526

Mr. S. Perry Brown
Chairman and
Executive Director
Texas Employment
Commission
Austin, Texas

Re: Is the Texas Employment
Commission authorized to
purchase a tract of land
under Section 26 of the
Texas Unemployment Com-
pensation Act, or must
it be purchased by the
Governor or with his ap-
proval under Article 5240,
Vernon's Civil Statutes?

Dear Governor Daniel and Colonel Brown:

You have requested jointly an opinion on the
following question:

"Is the Commission authorized to purchase
this tract of land under Section 26 of the
Texas Unemployment Compensation Act or
must it be purchased by the Governor or
with his approval under Article 5240?"

The facts upon which this question is based are
stated in your request as follows:

"Under authority of the above
statute, the Commission recently entered
into a contract for the purchase of cer-
tain land in Beaumont, Texas, to be used
as a site for the construction of a district
and local office building by the Commission.
After title had been approved by the office
of the Attorney General, the Comptroller
declined to issue a warrant in payment
of the purchase price of said land, until
further clarification of the following
paragraph from Attorney General's Opinion
No. WW-119 dated May 15, 1957:

"Therefore, under Art. 5240, V.C.S., the Employment Commission may select a site and negotiate with the owner. However, the power to purchase rests exclusively with the Governor and the Employment Commission cannot bind the State on any land purchase contract."

Subdivision (a) of Article 5221b-9, Vernon's Civil Statutes, provides as follows:

"(a) Duties and Powers of Commission: It shall be the duty of the Commission to administer this Act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the Commission shall prescribe. . . ." (Emphasis added)

Article 5221b-22a, Vernon's Civil Statutes, establishing the "Unemployment Compensation Special Administration Fund" provides as follows:

"There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Special Administration Fund which may be used by the Commission for the purposes of paying costs of the administration of this Act including the costs of construction and purchase of buildings and land necessary in such administration." (Emphasis added)

Article 5221b-9 prescribes the powers and duties of the Commission, and Article 5221b-22a states the purposes for which the Unemployment Compensation Special Administration Fund may be expended. Among the duties of the Commission is the administration of the Act, which includes the provisions

of Article 5221b-22a and to make such expenditures and to take action as it deems necessary to carry out the functions of the Commission. The Legislature, in Article 5221b-22a, recognizes that one of the functions of the Commission is the construction and purchase of buildings and land necessary to the administration, and it states that money may be expended for the purchase of land and construction of buildings. Therefore, you are advised that the Texas Employment Commission is specifically authorized to purchase land.

Article 5240, Vernon's Civil Statutes, provides as follows:

"When any land shall be required by the State for any character of public use, the Governor is authorized to purchase said land, or the right to the use thereof, for such purpose; or, failing to agree with the owner on the price therefor, such land may be condemned for such public use in the name of this State. Upon the direction of the Governor, proceedings shall be instituted against the owner of the land by the Attorney General or under his direction by the district or county attorney. Should the award of damages in the opinion of the Governor be excessive, such award shall not be paid but the State shall pay the costs of the proceedings and no further action shall be taken."

In construing the provisions of Article 5240, this office held in Opinion WW-119 that under the language of the hypothetical appropriation to the Texas Employment Commission, the Governor is authorized to purchase land for the headquarters of the Texas Employment Commission, stating:

"There is nothing in the language used in the above assumed appropriation act which would indicate anything other than that the land is to be acquired under the general authority of Article 5240, V.C.S. The word 'purchased' as used in the assumed appropriation act is not a restriction on the way the land should be acquired, but merely indicates that the sum thus appropriated would be used to pay for the land needed, whether the land is acquired through voluntary or involuntary sale.

"Therefore, under Art. 5240, V.C.S., the Employment Commission may select a site and negotiate with the owner. However, the power to purchase rests exclusively with the Governor and the Employment Commission cannot bind the State on any land purchase contract." (Emphasis added)

As pointed out above, the Texas Employment Commission is authorized by the express provisions of Article 5221b-9 and 5221b-22a, to purchase land. Therefore, the power of the Commission to purchase land under Article 5240, is not exclusive. You are therefore advised that the Commission is authorized to purchase the tract of land in question. Under the provisions of Article 5221b-9 and 5221b-22a, such purchase is not required to be approved by the Governor, and Attorney General's Opinion No. WW-119 is modified accordingly.

SUMMARY

The Texas Employment Commission is authorized to purchase land under the provisions of Article 5221b-9 and 5221b-22a, which purchase need not be approved by the Governor of Texas.

Yours very truly,

WILL WILSON
Attorney General of Texas

JR/jl/ci

APPROVED

OPINION COMMITTEE


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