



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON  
ATTORNEY GENERAL

April 24, 1959

Honorable J. M. Falkner  
Commissioner  
Department of Banking  
Austin, Texas

Opinion No. WW-608

Re: Authority of the Finance Commission to expend a portion of the funds of the Banking Department for the purpose of participating in the building program.

Dear Mr. Falkner:

You have requested an opinion of the following question:

Pursuant to the provisions of Chapter 1, Title 16, Revised Civil Statutes of Texas, can the Finance Commission pledge and cause to be expended a portion of the funds of the Banking Department for the purpose of participating in the building program of the State of Texas?

Article 342-112, Vernon's Civil Statutes, provides as follows:

"The Commissioner shall, from time to time as directed by the Finance Commission, submit to such Commission a full and complete report of the receipts and expenditures of the Banking Department and the Finance Commission may from time to time examine the financial records of the Banking Department or cause them to be examined. In addition, the Banking Department shall be audited from time to time by the State Auditor in the same manner as other State Departments, and the actual costs of such audits shall be paid to the State Auditor from the funds of the Banking Department. Fees, penalties and revenues collected by the Banking Department from every source whatsoever shall be retained and held by said Department, and no part of such fees, penalties and revenues shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Banking Department shall be paid only from such fees, penalties and revenues, and no such expense shall ever be a charge against the funds of this State. The Finance Commission shall adopt, and from time to time amend, budgets which shall direct the purposes, and prescribe the amounts, for which the fees, penalties and revenues of the Banking Department shall be expended; and the Finance Commission

shall, as of December 31, 1951, and annually thereafter, report to the Governor of the State of Texas the receipts and disbursements of the Banking Department for each calendar year; and shall within the first sixty (60) days of each succeeding Regular Session of the Legislature make a report to the appropriate committees of the House and Senate charged with considering legislation pertaining to banking." (Emphasis ours).

Section 51-b of Article III of the Constitution of Texas creating the State Building Commission and the State Building Fund provides, in part, as follows:

". . . The State Building Fund shall be expended by the Commission upon appropriation by the Legislature for the uses and purposes set forth in subdivision (c) hereof.

"(c) Under such terms and conditions as are now or may be hereafter provided by law, the Commission may acquire necessary real and personal property, salvage and dispose of property unsuitable for State purposes, modernize, remodel, build and equip buildings for State purposes, and negotiate and make contracts necessary to carry out and effectuate the purposes herein mentioned."

Under the provisions of Article 342-112, the State Banking Department is required to retain and hold all fees, penalties, or revenues it derives, and it provides that all expenses incurred by the Banking Department shall be paid from the Banking Department funds as directed by the budget adopted by the Finance Commission. One of the necessary expenses of any State agency is to provide adequate office space for the effectual operation of such agency. This may be accomplished by renting office space, purchasing buildings for office space, or contracting for the actual construction of office space, provided monies are available for such purpose. It is therefore our opinion that the participation of the Finance Commission in the state building program would be within the enumerated purposes for which the Banking Department funds may be spent.

Since all monies of the Banking Department must be retained by it, the expenditure of the Banking Department funds could not be made by the State Building Commission. Therefore, any contract entered into for the construction of office space of the Banking Department would have to be executed by that agency. You state in your letter that the Finance Commission desires to budget a certain amount of the Banking Department funds for the purpose of erecting an office building to be occupied by several departments making similar contributions to the construction of such office building by the State Building Commission.

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We have examined the provisions of Section 51-b of Article III of the Constitution of Texas and the provisions of Title 16 of the Revised Civil Statutes of Texas, 1925, and can find no provision prohibiting the Finance Commission from furnishing office space for the Banking Department by this method. On the contrary, it is our opinion that if the Finance Commission determines that this method of providing office space is the most efficient means to accomplish the purpose, it is specifically authorized to do so under the provisions of Article 342-112.

SUMMARY

The Finance Commission is authorized to participate in the State Building Program and budget Banking Department funds for the purpose of erecting an office building to be occupied by the Banking Department as well as other agencies of the State. Such contract should be executed by the Banking Commissioner upon authorization of the Finance Commission.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By *John Reeves*  
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APPROVED:  
OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL  
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