



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

January 18, 1962

Honorable Price Daniel
Governor of Texas
Capitol Station
Austin, Texas

Opinion No. WW-1244

Re: Authority of the Legis-
lature to appropriate
State Building Commis-
sion Funds to renovate,
equip and repair the ex-
terior of the San Jacinto
Memorial Tower and Museum
Building.

Dear Governor Daniel:

Your request for opinion on the above subject matter
reads as follows:

"As you know, the San Jacinto Memorial Tower and Museum Building is badly in need of construction work to protect the valuable records and exhibits housed in this building and to protect from injury those who work and visit in the building. A dangerous amount of flaking has been occurring between the joints of the masonry work for several years, and so much additional damage was caused by Hurricane Carla that the building is now leaking water into the museum and record rooms. It has caused the museum to be closed to the public.

"I have recommended to the Legislature an emergency appropriation of \$156,000 from the State Building Commission Fund to renovate, equip and repair the exterior and interior of the building, and the Fund has this much unappropriated money available.

"The question has been raised as to whether this structure is a 'building' within the meaning of the Texas Constitution, Sec. 51-b, Article 3, which authorizes the use of the Fund to 'modernize, remodel, build and equip buildings for State purposes.' Of course, it is often referred to as a monument, but actually the San Jacinto Memorial Tower is a building in the opinion of this office,

the State Board of Control and the staff of the State Building Commission.

"Also, you will note that the original resolution of the Texas Legislature, dated April 17, 1939, Chapter 16, Acts of the 46th. Legislature, Regular Session, makes reference to the 'San Jacinto Memorial Tower' as a 'building' seven times, and in subsequent resolutions and contracts under these resolutions, the structure is referred to as a 'building' at least 210 times. I attach a memorandum from the State Board of Control showing the actual usable floor space within the building, from which you will note that much of the interior of the shaft is used for housing, storage, etc.

"Since this matter is now pending in committees of both Houses, I would appreciate your earliest possible advice as to whether the San Jacinto Memorial Tower and Museum Building comes within the provisions of the Texas Constitution, for the purposes of State Building Commission funds being appropriated by the Legislature to do the necessary construction work above mentioned."

According to the memorandum attached to your request the structure contains 34,205 square feet of floor space and is constructed in such manner as to contain a basement floor, entrance floor, second floor, third floor, fourth floor, souvenir floor, observation floor and elevator machine floor.

The pertinent provision of Section 51-b of Article III of the Constitution of Texas reads 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, and negotiate and make contracts

necessary to carry out and effectuate the purposes herein mentioned."

Section 3 of Article 678m, Vernon's Civil Statutes, provides:

"Sec. 3. The Commission shall have the authority to promulgate such rules and regulations as it deems proper for the effective administration of this Act. Under such terms and conditions as may be provided by law, the Commission may acquire necessary real and personal property, modernize, remodel, build and equip buildings for State purposes, and make contracts necessary to carry out and effectuate the purposes herein mentioned in keeping with appropriations authorized by the Legislature. Provided, however, that the Commission shall not sell or dispose of any real property of the State, except by specific authority from the Legislature."

Section 24 of Article 678m, Vernon's Civil Statutes, provides:

"Sec. 24. The State Building Commission may, in its discretion, provide for the storage and display of the archives of Texas."

It is our opinion that the structure involved in your request constitutes a building for State purposes within the meaning of subdivision (c) of Section 51-b, Article III of the Constitution of Texas and Section 3 of Article 678m, for the reason that such structure is built in a manner to house valuable records and exhibits constituting archives of Texas. The structure contains numerous floors and approximately 34,000 square feet of floor space.

In view of the foregoing you are advised that subdivision (c) of Section 51-b of Article III of the Constitution of Texas and Sections 3 and 24 of Article 678m, Vernon's Civil Statutes, above quoted, constitutes pre-existing law for the appropriation outlined in your request.

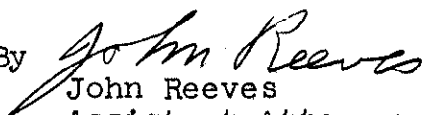
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S U M M A R Y

The Legislature is authorized to appropriate State Building Commission Funds to renovate, equip and repair the exterior and interior of the San Jacinto Memorial Tower and Museum Building.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant Attorney General

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Howard Mays
Bob Eric Shannon
Joseph Trimble

REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.