



# The Attorney General of Texas

September 13, 1979

**MARK WHITE**  
Attorney General

Supreme Court Building  
P.O. Box 12548  
Austin, TX. 78711  
512/475-2501

Honorable James M. Windham  
Chairman  
Texas Board of Corrections  
Livingston, Texas 77381

Opinion No. MW-57

Re: Construction of a new prison.

701 Commerce, Suite 200  
Dallas, TX. 75202  
214/742-8944

Dear Mr. Windham:

You have asked:

1. Is the Department of Corrections authorized to acquire acreage for a prison site upon which to construct a prison unit solely with the appropriation for prison construction?
2. If so, is there any restriction with respect to the location of such acreage?

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905  
915/533-3484

723 Main, Suite 610  
Houston, TX. 77002  
713/228-0701

The major portions of the appropriations act which are relevant to your inquiry are:

## DEPARTMENT OF CORRECTIONS

4313 N. Tenth, Suite F  
McAllen, TX. 78501  
512/682-4547

For the Year  
Ending  
August 31, 1980

200 Main Plaza, Suite 400  
San Antonio, TX. 78205  
512/225-4191

- |    |                                   |               |
|----|-----------------------------------|---------------|
| 8. | <b>Building Program:</b>          |               |
| a. | Beto Unit Construction            | \$ 13,150,000 |
| b. | Proposed New Unit                 | 20,167,000    |
| c. | Cell Block Additions at six units | 13,280,500    |

An Equal Opportunity/  
Affirmative Action Employer

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Any unexpended balances as of August 31, 1979, for the Department of Corrections in the general appropriations made and/or reappropriated by the Sixty-fifth Legislature, Regular Session (House Bill

No. 510) for Building Appropriations, (including funds from Mineral Lease Fund No. 272), are hereby reappropriated to the Department of Corrections for the same purpose for the biennium beginning September 1, 1979, provided, however, that such reappropriated funds shall not be expended without the approval of the Board of Corrections; provided, also, that copies of such approvals shall be filed with the governor and the Legislative Budget Board.

....

The Department of Corrections is authorized to acquire from the proceeds of the sale of properties, and/or the exchange of properties, and/or from the appropriation for prison construction, acreage for a prison site upon which to construct a prison unit. The acreage for a prison site shall be acquired only when authorized by the Approval Board consisting of the Governor, the Commissioner of the General Land Office, and the Chairman of the Board of Corrections.

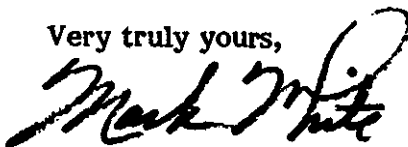
The question arises because of a rider in the preceding appropriations act which covered the period between September 1, 1977, and August 31, 1979. That rider required that land for a new prison was to be acquired from the proceeds of the sale of the Blue Ridge Farm. The use of those funds, however, was limited by statute to the purchase of land within a 75-mile radius of Huntsville. In light of these provisions Attorney General Opinion H-1158 (1978) concluded that any acreage purchased would have to comply with the statutory requirement and be located within 75 miles of Huntsville.

That rider, however, does not appear in the current appropriations act. Neither the reference to the Approval Board nor any other portion of the current appropriations provisions are tied to the 1955 statute authorizing the sale of the Blue Ridge Farm. Acts 1955, 54th Leg., ch. 457, at 1178. In fact, the second rider reproduced above specifically indicates that the department is authorized to finance the acquisition of property from any one of three alternative sources. Thus, the department is specifically authorized to utilize the appropriation for prison construction rather than the proceeds from the sale of the Blue Ridge Farm as the exclusive source of funds for the acquisition of a site for a new prison. The current appropriations act contains no geographic limitation on the use of the appropriation for prison construction.

#### S U M M A R Y

The Department of Corrections may purchase a site for a new prison solely from the appropriation for prison construction. Those funds are not burdened with geographic limitations.

Very truly yours,



MARK WHITE  
Attorney General of Texas

**JOHN W. FAINTER, JR.**  
First Assistant Attorney General

**TED L. HARTLEY**  
Executive Assistant Attorney General

Prepared by C. Robert Heath  
Assistant Attorney General

**APPROVED:**  
**OPINION COMMITTEE**

**C. Robert Heath, Chairman**  
**David B. Brooks**  
**Rick Gilpin**  
**William G Reid**  
**Bruce Youngblood**