



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

June 24, 1955

Honorable Claude Isbell
Executive Secretary
Board of Regents of
State Teachers Colleges
Austin, Texas

Letter Opinion No. MS-226

Re: Authority of the Board of
Regents for the State Teach-
ers Colleges to purchase
land from funds accruing
under Section 17 of Article
VII of the Texas Constitution.

Dear Senator Isbell:

You have requested the opinion of this office as to the authority of your Board to expend money from the Constitutional Building Fund - Section 17 of Article VII of the Constitution of Texas - to purchase land for the college. You have asked two questions, the first of which is:

"Question No. 1. Would the Board be authorized to spend any of this money for the purchase of land adjoining the campus?"

The Constitutional Building Fund Amendment reads, as here applicable: "Also, there is hereby levied, . . . a state ad valorem tax on property . . . for the purpose of creating a special fund for the purpose of acquiring, constructing and initially equipping buildings, or other permanent improvements at the designated institutions of higher learning; . . ." (Emphasis supplied)

This provision is self-enacting. Att'y Gen. Op. V-798 (1949). Consequently, the authority to spend the allocated funds must be derived solely from this Constitutional provision, unaided by a Legislative interpretation. Where the will of the citizens of Texas who have to bear the bond tax burden has been clearly expressed it can not be ignored or repudiated. Fletcher v. Howard, 120 Tex. 298, 39 S.W. 2d 32 (1931); Att'y Gen. Op. 0-2088 (1940). The proceeds of this special fund cannot be invaded for any purpose except one of the purposes for which such fund was voted. Att'y Gen. Op. 0-840 (1939). The purchase of land is quite a different thing from the authorized purpose of "acquiring, constructing and initially equipping buildings, or other permanent improvements." Such an expenditure is not authorized from the Constitutional Building Fund.

"Question No. 2. Would the Board be authorized to expend any of this money for the purchase of land to be used for the erection of a college building thereon?"

The right to levy and collect taxes carries with it the right to expend the fund when so collected to carry out the purposes for which it was collected. Fletcher v. Howard, supra.

"Whenever a power is given by statute (or, as here, by the Constitution) everything necessary to make it effectual or requisite to attain the end is implied. It is a well established principle that statutes containing grants of power are to be construed so as to include the authority to do all things necessary to accomplish the object of the grant. The grant of an express power carries with it by necessary implication every other power necessary and proper to the execution of the power expressly granted. Where the law commands anything to be done, it authorizes the performance of whatever may be necessary for executing its commands." Terrell v. Sparks, 104 Tex. 191, 135 S.W. 519 (1911).

In the case of Moon v. Alred, 277 S.W. 787 (Tex.Civ.App. 1925, error dismissed), the Court held that the power to erect and equip a courthouse and a jail carried with it the necessary power to buy a site on which to erect them. Our Supreme Court held that a purchase of land on which was situated a cotton oil mill was within the general authority of the Prison Commission as an incident of the mill purchase. Herring v. Houston National Exchange Bank, 114 Tex. 394, 269 S.W. 1031 (1925).

In Attorney General's Opinion 0-3100 (1941) this office held that the authority given the Department of Public Safety to build a police broadcasting station carried with it the necessary authority to purchase the land on which to erect the station.

Consequently, your Board has authority to use its Constitutional Building Fund allocation to purchase land on which to erect a college building if the building is to be erected from the proceeds of obligations secured by the constitutional five cent tax.

Yours very truly,

APPROVED:

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