



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

August 30, 1944

Honorable Clifford B. Jones, President
Texas Technological College
Lubbock, Texas

Dear Sir:

Opinion No. O-6098

Re: Statutory authority
for Texas Technologi-
cal College to execute
Marketing Contract and
related questions.

We have your letter reading as follows:

"It will be appreciated if at your convenience you will please advise whether this College, through its Board of Directors, has the authority to execute a marketing contract and thus become a member of the Texas Certified Seed Growers Association, a non-profit cooperative association, with its principal office and place of business at Lubbock. Copy of such marketing contract is attached hereto.

"It is probable that the College is in about as good shape as the Texas Certified Seed Growers Association to dispose satisfactorily of the excess grain sorghum seed raised on this campus. The principal reason therefore why the College would be interested in having membership is to evidence our faith in the objectives sought by the said Seed Growers' Association, namely the production and distribution of better seed."

From the marketing contract you enclosed we quote certain pertinent provisions:

"MARKETING CONTRACT
OF THE
TEXAS CERTIFIED SEED GROWERS ASSOCIATION

"The Texas Certified Seed Growers Association, a non-profit, co-operative Association, with its

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principal office and place of business at Lubbock, in Lubbock County, Texas, hereafter referred to as 'Association' and the undersigned, hereinafter referred to as 'Breeder', AGREE:

". . .

"2. The Breeder agrees to deliver to the Association all of each variety of State Certified Grain Sorghum Seed now on hand or produced by him or for him or acquired by him as landlord or tenant for ten (10) crop years from and after date of this contract.

". . .

". . .

"4. Title to such Grain Sorghum Seed shall pass to the Association upon delivery. The Association may borrow money and pledge the Grain Sorghum Seed or other assets as security for loans.

"5. The Association shall re-sell said Grain Sorghum Seed as it deems best under market conditions, and shall deduct from the proceeds of sale thereof, freight, insurance, storage and interest, as well as the cost of operating and maintaining the Association, and in addition thereto, in the discretion of the Board of Directors reserves not to exceed five (5) per cent of the gross re-sale price of said Grain Sorghum Seed. All reserves shall become a permanent continuing fund of the Association, unless distributed as and when conclusively determined by the Board of Directors; and each member's interest in such Reserve fund shall be in proportion to his contribution thereto as approved by the Board of Directors. The Breeder agrees that reserves deducted under any previous marketing contract between him and the Association shall hereby become subject to the provisions of this contract.

". . .

". . .

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". . .

"9. If for any reason the Breeder fails or refuses to deliver all of his State Certified Grain Sorghum Seed covered by this contract as herein provided, or sells any State Certified Seed as individual property or fails to report sales and to deliver proceeds of Sales to Association Secretary, then and in that event he shall be held to have breached his contract, and shall pay to the Association liquidated damages in the sum of 25¢ per bushel on all Grain Sorghum Seed withheld or sold, and a reasonable attorney fee and costs of suit, which shall be due and payable at Lubbock, Lubbock County, Texas. Breeder furthermore agrees in this case to surrender his license to the State Seed and Plant Board and discontinue growing State Certified Seed, and must return all unused Association Brand Bags to Association at prevailing price of bags at the time.

". . .

". . ."

We have examined the statutes creating and affecting the College and we are of the opinion the Board of Regents is without authority to enter into the contract you enclosed. It is true that Article 2629 authorizes the College to give instruction in agricultural pursuits, and Article 2631 makes it the duty of the Board to provide the facilities that will enable the student body to pursue courses in farm husbandry. These statutes do, of course, authorize the College to make it possible for the students to do original and research work in agriculture, such as the breeding and marketing of sorghum seed. It is a wholly different matter, however, when it is proposed in connection with that authorized College activity to enter into a contract with a private agency for the marketing of College or State property. Especially is this true when the contract contains a provision for liquidated damages and attorneys fees, or provides for a commission not exceeding five per cent for the private concern's services.

It seems to be well settled in Texas that universities and colleges, like other corporations, have only such powers as are granted in their charters or by governing statutes. R. B. Spencer & Co. v. Thorp Springs Christian College, 41 S.W. (2d) 482; 42 Tex. Jur., p. 821, sec. 4.

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This is even more true of public colleges and universities. The members of the Board of Regents of a state college are officers of the state. Such state schools are purely creatures of the Constitution and laws of Texas. The only powers or charters they can have are those granted by the Legislature. *Splawn v. Woodard*, 287 S.W. 677; 42 Tex. Jur., p. 822, sec. 5.

Finally, we point out that state officers can make no binding contract without previous authority conferred by law. *State v. Perlstein*, 79 S.W. (2d) 143; 38 Tex. Jur., p. 840, sec. 22.

Since we have concluded there is no statutory authority for it, we advise the College should not execute the contract.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By *Elbert Hooper*
Elbert Hooper
Assistant

KH/JCP

RECEIVED SEP 21, 1944
E. J. Blackburn
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY *BWB*
CHAIRMAN