



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 29, 1952

Hon. C. H. Cavness
State Auditor
Austin, Texas

Opinion No. V-1443

Re: Applicability of H.B.
753, Acts 52nd Legis-
lature, 1951, estab-
lishing an accounting
system for State prop-
erty, to such property
as The Alamo, the French
Embassy, Battleship Tex-
as, and the like.

Dear Sir:

Your request for an opinion is as follows:

"Your interpretation or answers to the following questions in connection with House Bill 753 of the 52nd Legislature, an Act providing for the responsibility and accounting for State property, are desired not only by this office but also by the State Comptroller of Public Accounts and the State Board of Control.

"1. Are the following agencies subject to all the provisions of House Bill No. 753?

- A. Texas Hall of State, Dallas, Texas
- B. San Jacinto Museum, San Jacinto Monument, Texas
- C. Battleship Texas, San Jacinto Monument, Texas
- D. The French Embassy, Austin, Texas
- E. The Alamo, San Antonio, Texas
- F. Museum, in the old Land Office Building here in the Capitol Grounds, operated by the Daughters of the Republic and the Daughters of the Confederacy

"2. In the event any of the above agencies are found to be subject to compliance with H.B.

No. 753, shall the records, reports, and forms as referred to in Section 2, Sub-section (a) thereof be filed with the Comptroller by the agency in question, or by the State Board of Control which serves in a supervisory capacity?"

House Bill 753, Acts 52nd Leg., R.S. 1951, ch. 356, p. 602 (Article 6252-6, V.C.S.), provides:

"Section 1. The Legislature finds that the State has a very substantial investment in real and personal property and that a substantial portion of the annual income of the State is spent to acquire property for State purposes and to maintain State property. The purpose of this Act is to establish a system for the orderly accounting for State property, to establish responsibility for the maintenance and care of State property and to prescribe the method of fixing pecuniary liability for the misuse of State property by officials and employees. The principles embodied in this Act are now found in the common law and Statutes of this State; this Act restates those principles and prescribes the implementing procedures. The State has a real interest in its property and is entitled to having it managed and used in a sound and businesslike manner so that the maximum benefits may be obtained from it and the State's investment therein protected.

"Sec. 2. The provisions of Articles 10, 11, 12, 14, 22, and 23, Revised Civil Statutes of Texas, 1925, and Acts, Fiftieth Legislature, 1947, Chapter 359, on the interpretation of Statutes shall apply specifically to this Act. In addition to these standard definitions, in this Act, unless the context otherwise requires:

"(a) 'Agency' shall include any State department, agency, board or other instrumentality, whether it is financed in whole or in part by funds appropriated by the Legislature or not; but shall not include local political subdivisions of the State, such as counties, cities, towns, school districts, flood control districts, irrigations districts, and the like.

"(b) 'Agency head' shall mean the full-time State elected or appointed official or officials who administer the agency or the executive who has been appointed to administer the agency by a part-time State elected or appointed official or officials.

"Sec. 3. All real and personal property belonging to the State shall be accounted for by the head of the agency which has possession of the property.

"(a) The Comptroller of Public Accounts shall administer the property accounting system established by this Act. The State Auditor shall administer the property responsibility system established by this Act. The Comptroller shall issue such rules and regulations and manual of instruction and prescribe such records, reports, and forms as he deems necessary to accomplish the objects of this Act subject to the approval of the State Auditor.

...

"(b) The Comptroller shall maintain a complete and accurate set of centralized records of State property. However, where the Comptroller finds that an agency has demonstrated its ability and competence to maintain complete and accurate detailed records of the property it possesses without the detailed supervision by the Comptroller, the Comptroller may direct that the detailed records be kept at the principal office of such agency. Where the Comptroller issues such order, the Comptroller shall keep only summary records of the property of such agency and the agency shall keep such detailed records as the Comptroller directs and furnish the Comptroller with such reports at such times as the Comptroller directs.

"(c) Each agency head shall cause each item of State property possessed by his agency to be marked so as to identify it. The agency head shall follow the instructions issued by the Comptroller in marking State property.

"Sec. 4. (a) All State agencies shall comply with the provisions of this Act and shall keep the property records required by this Act.

"(b) All real property owned by the State shall be accounted for by the agency which possesses the property.

"(c) All personal property owned by the State shall be accounted for by the agency which possesses the property. The Comptroller shall by regulation define what is meant by personal property for the purposes of this Act. . . .

"Sec. 5. Each agency head is responsible for the proper custody, care, maintenance, and safekeeping of the State property possessed by his agency. . . .

"(e) Each agency shall make a complete physical inventory of all property in its possession once a year. The inventory shall be taken on the date prescribed for the agency by the Comptroller.

"(f) The agency head shall forward a signed statement describing the method by which the inventory was verified, along with a copy of such inventory within forty-five (45) days after the inventory date for the agency.

"(g) The Comptroller shall supervise the property accounting records of each agency so that the records accurately reflect the property currently possessed by the agency. The Comptroller shall prescribe the methods whereby items of property are deleted from the property records of the agency.
. . . ."

It is noted from the above quoted provisions that House Bill 753 is applicable to all property, real and personal, owned by the State; and to the "agency" which has possession of such property. "Agency" is defined by the act as "any State department, agency, board or other instrumentality whether it is financed

in whole or in part by funds appropriated by the Legislature or not" with exceptions not applicable to your request. Therefore, two questions must be determined in regard to each property listed in your request. First, is the property owned by the State? Second, if the property is owned by the State, what agency, as defined by H.B. 753, has possession of the property? We will discuss these questions as they regard the individual property under consideration.

1. The Alamo Property. S.H.B. 1, Acts 29th Leg., R.S. 1905, ch. 7, p. 7, provides in part:

"That the Governor of the State of Texas be and is hereby authorized to purchase at a price not to exceed Sixty-five Thousand Dollars (\$65,000), and to procure to be executed to the State of Texas by the owners of the property hereinafter mentioned a good and sufficient conveyance in fee of all the land in the City of San Antonio, Texas, known as the Hugo & Smeltzer Company property, formerly a part of the old Alamo Mission and adjoining the Alamo Church property now owned by the State; . . .

"Sec. 3. Upon the receipt of the title to said land, the Governor shall deliver the property thus acquired, together with the Alamo Church property already owned by the State, to the custody and care of the Daughters of the Republic of Texas, to be maintained by them in good order and repair, without charge to the State, as a sacred memorial to the heroes who immolated themselves upon that hallowed ground; and by the Daughters of the Republic of Texas to be maintained or remodeled upon plans adopted by the Daughters of the Republic of Texas, and approved by the Governor of Texas; provided that no changes or alterations shall be made in the Alamo Church proper, as it now stands, except such as are absolutely necessary for its preservation. All of said property being subject to future legislation by the Legislature of the State of Texas."

Pursuant to the above quoted provisions the Alamo property as it now exists was acquired by the State and custody of the property placed in the Daughters of the Republic. In construing its provisions it was held in Conley v. Daughters of the Republic, 106 Tex. 80, 156 S.W. 197 (1913), that "the state, acting by its Legislature, had the authority to acquire title to the Alamo property and to place that property in the custody of the corporation, the Daughters of the Republic." The court also stated:

"We are of the opinion that by the acceptance of the terms of the statute the corporation became a trustee for the State."
156 S.W. at 200.

Since the Daughters of the Republic is a trustee for the State, it is an "instrumentality" which has possession of state property, and it is our opinion that it constitutes an agency for the State within the meaning of H.B. 753. Therefore, the Daughters of the Republic, being the agency in possession of the Alamo property, should keep the property records required by the act, account for all property owned by the State in its possession, and file such reports as directed by the Comptroller. Letter Opinion to Honorable Hall H. Logan, Chairman of State Board of Control, dated December 13, 1949.

2. The French Embassy Property. H.B. 728, Acts 49th Leg., R.S. 1945, ch. 286, p. 455 (Art. 687b, V.C.S.) provides:

"Section 1. There is hereby appropriated all moneys now in the Texas Centennial Commission funds if and when available to apply on the purchase of the French Embassy building and all properties therein.

"Sec. 2. Said property to consist of Embassy building and two and one-half (2½) acres out of the Southeast part of Outlot No. 1, in Division B, City of Austin, Texas, facing easterly on San Marcos Street, with line commencing at the intersection of San Marcos and Ninth Streets and running southerly with the West line of San Marcos Street to an alley between Seventh and Ninth Streets.

"Sec. 3. Said building is hereby set aside for the uses and purposes of the Daughters of the Republic of Texas, and the said Daughters of the Republic of Texas be and the same are hereby authorized to take full charge of said building and use of the same as they may see proper. The property of the said French Embassy shall be the property of the State, and the title of said property shall remain in custody of the Board of Control."

Pursuant to the foregoing provisions the State Board of Control was authorized to purchase the French Embassy property for the State. Att'y Gen. Op. V-206 (1947). As soon as title was acquired by the State, custody and possession of the French Embassy property was placed in the Daughters of the Republic in accordance with the provision of H.B. 728 of the 49th Legislature. Therefore, our discussion relative to the Alamo property is applicable to the French Embassy property.

3. Battleship Texas. The Battleship Texas was acquired by the State by gift from the United States Government.

Article 6145-2, V.C.S., created the Battleship Texas Commission for the purpose of accepting the gift and maintaining the property as a permanent memorial. Section 3 provides:

"The duties of the Commission shall be: To provide a proper berth for the Battleship 'Texas,' to select a location adjacent to, or on, the San Jacinto Battlegrounds for such berth; to ready the vessel for visitation by the public; to ascertain and institute a proper charge for admission to said vessel; to maintain and operate said vessel as a permanent memorial and exhibition, and to allocate the money herein appropriated as may be necessary for the fulfillment of the duties contained herein. Said Commission is further authorized to perform all other duties in addition to those specifically named above or mentioned below which are necessary to carry out the provisions and purposes of this Act. The aforesaid

Commission shall be and hereby is authorized to accept gifts or donations for the purposes of this Act."

In a letter opinion to Mr. Gordon H. Lloyd, Executive Secretary of the Employees Retirement System, dated April 11, 1949, this office held that employees of the Battleship Texas Commission were eligible to become members of the State Employees Retirement System since the Commission is a "Department" of the State Government within the meaning of Article 6228a, V.C.S.

In view of the foregoing, it is our opinion that the Battleship Texas Commission is an "agency" of the State within the meaning of H.B. 753. As it has possession of the Battleship Texas, it should keep the property records required by the act.

4. San Jacinto Museum Property. "The San Jacinto State Park", composed of the lands owned and acquired by the State called the San Jacinto battlefield, was established in 1907 by the Legislature and placed in the custody of the State Superintendent of Public Buildings and Grounds (now State Board of Control) and the San Jacinto State Park Commissioners. S.B. 18, Acts 30th Leg., R.S. 1907, ch. 48, p. 104.

In 1939, the San Jacinto Memorial Tower was constructed and the Legislature then authorized the State Board of Control to contract with the San Jacinto Museum of History Association to the end that the association should assume the care, custody and control of the San Jacinto Memorial Tower. S.C.R. 21 of the 46th Leg., R.S. 1939, p. 733.

Attorney General's Opinion O-951 (1939) upheld the validity of a contract placing the care, custody, and control of the San Jacinto Memorial Tower in the San Jacinto Museum of History Association, stating:

". . . The contract does not violate Article 3, Section 51 of our Constitution, nor, so far as we have observed, any other portion or provision of the Constitution of Texas. The authority of the State of Texas to enter into contracts of this character was upheld in the case of Conley vs. Daughters of the Republic, 156 S.W. 197.

. . .

". . . By Section 6 of the contract, it is contemplated that the corporation, as trustee for the State, shall use the money collected from operating the elevator to defray the expenses of operating the elevator, paying janitors and watchmen, and for maintenance and policing of the building, and for complying with the general terms of the resolution of the Legislature in respect to insurance, with the balance of said moneys, as well as the balance of the net profits remaining after the payment of such expenses, to be used on the grounds of the San Jacinto State Park under the direction of the Board of Control. . . ."

Since the San Jacinto Museum of History Association is trustee for the State, it is our opinion that it constitutes an "agency" of the State within the meaning of H.B. 753. Since it is in possession of the San Jacinto Memorial Tower, the San Jacinto Museum of History Association should keep the property records required by H.B. 753, account for all State property in its possession as required by the act, and file such reports as directed by the Comptroller.

5. Old Land Office Building Property. H.B. 831, Acts 34th Leg., R.S. 1915, ch. 208, p. 486, provides in part:

"That as soon as the building located near the Capitol and known as the General Land Office Building, in Austin, Travis county, Texas, is vacated the same is hereby set aside for the uses and purposes of the Daughters of the Republic and the Texas Division of the Daughters of the Confederacy; and the said Daughters of the Republic and the Texas Division of the Daughters of the Confederacy be and the same are hereby authorized to take full charge of said building and use the same conjointly as they see proper; provided, however, that the Daughters of the Republic shall occupy the upper floor of said building and the Texas Division of the Daughters of the Confederacy shall occupy the lower floor of said building.

"In order that the said building known

as the General Land Office, and now occupied as the General Land Office, in Austin, Travis county, Texas be properly repaired and remodeled, after the same has been vacated as the General Land Office, the sum of ten thousand (\$10,000.00) dollars or so much thereof as may be necessary, is hereby appropriated out of any fund not otherwise appropriated, to be used in repairing and remodeling said building, the same to be expended under the direction of the Superintendent of Public Buildings and Grounds."

The Legislature by the above quoted provisions placed the custody and control of the "Old Land Office Building" in the Daughters of the Republic and the Daughters of the Confederacy, thereby making them trustees for the State. Conley v. Daughters of the Republic, supra. Therefore, our discussion relative to the Alamo property and the French Embassy property is applicable to the "Old Land Office Building."

6. Texas Hall of State property. S.B. 22, Acts 43rd Leg., 2nd C.S., 1934, ch. 69, p. 164, created the Texas Centennial Commission, granting it "plenary power to do any and all things in its judgment necessary to carry out the purposes of the organization," to-wit, the holding of the Texas Centennial Celebration or Celebrations in 1936. Section 14 of the act, however, provided:

"All lands and buildings purchased by Legislative appropriations and all net profits that may be acquired by said Commission shall be turned over to the State of Texas within two years from the close of the Texas Centennial celebration for such disposition as the Legislature may then determine after a final report to the Legislature by the Commission shall have been filed with the Secretary of State, and the Commission shall then be discharged by legislative action, and the corporation dissolved."

Section 11 of H.B. 11, Acts 44th Leg., R.S. 1935, ch. 174, p. 427, provides:

"All permanent buildings to be erected in the City of Dallas for the Central

Exposition erected out of funds hereby appropriated shall be upon the site of the Centennial Central Exposition in the City of Dallas in accordance with plans and specifications approved by the Texas Centennial Central Exposition, and on land the title to which shall be in the State of Texas. The Texas Centennial Central Exposition shall have the right to, possession of, and the free use and occupancy of the said buildings for the duration of the Central Exposition; provided, however, that the aforesaid buildings and the land on which they will be situated are hereby leased by the State of Texas to the City of Dallas for a period of twenty (20) years, commencing at the termination of the Central Exposition, at a rental of One Hundred Dollars (\$100) per year for said buildings, payable annually in advance. . . ."

On October 15, 1935, the City of Dallas issued a warranty deed on a tract of land situated in Dallas to the State of Texas upon which the Texas Hall of State was built. Vol. 1920, page 397 of the Deed Records of Dallas County, Texas.

On February 25, 1938, pursuant to the provisions of H.B. 11 of the 44th Legislature, the State of Texas acting through the Board of Control leased the Texas Hall of State to the City of Dallas for a period of twenty years. This lease contract provided in part:

"The City of Dallas covenants and agrees that during the term of this lease, said building, furnishings, and equipment shall be used only for public purposes, including annual State expositions, and that such building shall not be maintained or operated for purposes of private profit; that there shall be no charge imposed upon any exhibitor in any of said buildings for exhibit space, and that there shall be no admission charge for entrance into such building."

The City of Dallas is merely a lessee of the State by virtue of H.B. 11 of the 44th Legislature and not an agent or trustee for the State. Therefore, it is our opinion that the State Board of Control

is the agent of the State in possession of the Texas Hall of State property and is required to keep the property records, account for all property owned by the State in its possession, and file such reports as directed by the Comptroller.

SUMMARY

House Bill 753, Acts 52nd Leg., R.S. 1951, ch. 356, p. 602 (Article 6252-6, V.C.S.), establishing an accounting system for state property is applicable to the Texas Hall of State, San Jacinto Memorial Tower, Battleship Texas, French Embassy, Alamo, and the Old Land Office Building, all of which property is owned by the State of Texas. The groups or associations in possession of these state properties are "agencies" of the State as that term is defined in H.B. 753, and are, therefore, required to keep the property records, account for all State property in their possession, and file such reports as directed by the Comptroller of Public Accounts, as provided in H.B. 753.

Yours very truly,

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