



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 29, 1953

Hon. Tom Sealy, Chairman
The Board of Regents
The University of Texas
Austin, Texas

Letter Opinion No. MS-28

Re: Ability of the University of Texas to terminate its liability to materialmen on a construction project through assenting to the submitted plan for pro rata distribution of the retained portion of the contract price for the building.

Dear Sir:

We have given careful consideration to the proposed plan for a pro rata distribution of the funds retained by the University of Texas, which represent the unpaid balance of the contract price due the Fulcher Construction Company in the installation of heating and air conditioning of three classroom buildings, and it is our opinion that the proposed plan is legally permissible and if executed will release the University of the lien provided in Article 5472a, V.C.S.

Article 5472a, V.C.S., reads as follows:

"That any person, firm or corporation, or trust estate, furnishing any material, apparatus, fixtures, machinery or labor to any contractor for any public improvements in this State, shall have a lien on the moneys, or bonds, or warrants, due or to become due to such contractors for such improvements; provided, such person, firm, corporation, or stock association, shall, before any payment is made to such contractor, notify in writing the officials of the State, county, town or municipality whose duty it is to pay such contractor of his claim."

It is elementary that a lien, created by contract or by a statute, may be extinguished by the lien holder by a duly executed release.

Section 1 of Article 5472b-1, V.C.S., provides:

"That whenever any claim or claims shall be filed attempting to fix a lien, secured or claimed by any instrument filed under the provisions of Chapter 17, of the General Laws of the State of Texas, passed by the Thirty-ninth Legislature in Regular Session, that the contractor or contractors against whom such claim or claims are made, may file a bond with the officials of the State, county, town or municipality whose duty it is to pay the moneys, bonds or warrants to such contractor or contractors. Said bond shall be double the amount of the claims filed, and shall be payable to the claimant or claimants. It shall be executed by the party filing same as principal, and by a corporate surety authorized under the laws of Texas to execute such bond as surety, and shall be conditioned substantially that the principal and surety will pay to the obligees named, or their assigns, the amount of the claim or claims, or such portion or portions thereof as may be proved to have been liens, under the terms of Chapter 17, General Laws of the State of Texas, passed by the Regular Session of the Thirty-ninth Legislature. The filing of said bond and its approval by the proper official of the State, county, town or municipality, shall release and discharge all liens fixed or attempted to be fixed by the filing of said claim or claims, and the official or officials whose duty it is to pay the moneys, bonds or warrants shall pay or deliver the same to the contractor or contractors or their assigns. Said officials shall send by registered mail an exact copy of said bond to all claimants."

According to the proposed plan the contractor has agreed to make the surety bond provided in said Article 5472b-1. When this bond is executed in accordance with the provisions of said Article and filed with and approved by the University, the lien held by the B & B Engineering & Supply Company, Inc. will be fully released and discharged.

Yours very truly,
JOHN BEN SHEPPERD
Attorney General

By
W. V. Geppert
Assistant