



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD**  
ATTORNEY GENERAL

November 24, 1953

Hon. Walter L. Bell  
Executive Director  
State Board of Control  
Austin, Texas

Letter Opinion No. MS-108  
Re: Authority of State Comptroller to approve warrants for emergency purchases of printing and stationery.

Dear Mr. Bell:

You have requested an opinion on the following questions:

"Is the Comptroller of Public Accounts authorized to issue warrants in payment of emergency purchases of printing and stationery supplies when the emergency purchase is made in compliance with the provision of Section 21, Article 16 of the Constitution of Texas, even though the supplies purchased are under a prior contract but the contractor is unable to furnish such supplies when needed?"

You state that "these emergency purchases usually arise where State Agencies are in need of immediate deliveries of certain supplies which the contractor is unable to deliver at that time." Section 21 of Article XVI of the Constitution of Texas provides that all stationery and printing (exceptions not applicable here) shall be performed under contract to the lowest responsible bidder and approved by the Governor, Secretary of State and Comptroller. In construing the provision it was stated in Attorney General's Opinion S-75 (1953):

"Supplies and services enumerated in Section 21 of Article XVI of the Constitution of Texas cannot be purchased from anyone who does not hold a contract therefor which has been let on competitive bids and which has been approved by the Governor, Secretary of State, and Comptroller, even though the price paid is not in excess of the regular contract price then in force for similar supplies and services. If additional supplies or services not covered

Hon. Walter L. Bell, page 2 (MS-108)

by the original contract are needed, a new contract must be entered into for such additional supplies or services in compliance with Section 21 of Article XVI of the Constitution."

The statutes governing contracts for printing and stationery supplies are contained in Chapter 2, Title 20, Articles 607 et seq., Vernon's Civil Statutes. Article 618 reads:

"Should all bids on any contract be rejected, or the successful bidder fail to execute bond as provided herein, or should the contract be abrogated, the Board shall let a new contract in the manner provided herein. The Board may in its discretion make such temporary arrangements to meet the emergency as the public interest may demand."

You state that all purchases involved in this request have been made in compliance with Section 21 of Article XVI of the Constitution. Furthermore, you have informed us that the original contractor has authorized the State to enter into the subsequent contracts under which the emergency purchases have been made. Where the contractor gives his consent for the Board of Control to make a purchase elsewhere, it is our opinion that the contract has been abrogated by agreement of the parties with respect to that purchase and, under the provisions of Article 618, the Board may make temporary arrangements to meet the emergency.

Article 617 provides that the Board of Control, with the consent of the Governor or Comptroller, may abrogate a contract "if the contractor shall fail to perform the work or furnish the supplies in accordance with the law and with his contract as promptly as the exigencies of the public service demand." Under the facts involved in this case, the failure or inability of the contractor to perform has not amounted to a breach of his contract, nor is he insisting on his right to perform under the contract. On the contrary, he has consented to a partial abrogation in order to enable the State to obtain the supplies or services more quickly than would be required in the normal course of business.

Hon. Walter L. Bell, page 3 (MS-108)

Since you state all constitutional and statutory provisions relating to emergency purchases of stationery and supplies have been complied with, it is our opinion that the Comptroller is authorized to issue warrants in payment of such purchase.

Yours very truly,

JOHN BEN SHEPPERD

By

John Reeves  
Assistant

JR:am:hep