



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

August 26, 1957

Mr. D. C. Greer
State Highway Engineer
State Highway Department
Austin, Texas

Opinion No. WW-237

Re: Does the Highway Commission have the authority to plan, contract for, and construct buildings, in connection with the building of highways without supervision or approval of any other State Agency or Department?

Dear Mr. Greer:

We have your letter in which the pertinent facts are substantially stated by you as follows:

For more than thirty years the Highway Department has been engaged in a continuous program of designing and constructing a system of State Highways including those buildings deemed necessary by the Highway Commission for the accomplishment of this purpose.

The appropriations for the Highway Department for many years have provided that the money appropriated is for establishing, planning, constructing and maintaining a system of State Highways as contemplated and set forth in Chapter 1, Title 116, R.C.S. and Chapter 186, Acts of the 39th Legislature (1925). Section 1 of the 1925 Act above mentioned reads as follows:

"The term 'highway' as used in this act shall include any public road or thoroughfare or section thereof and any bridge, culvert or other necessary structure appertaining thereto."

The statutes above mentioned have been interpreted for approximately thirty years by the Highway Department as giving it full and exclusive authority to do all of the things necessary for the construction and maintenance of the Highway system. This construction was made by the Highway Department in view of the two decisions of the Attorney General hereinafter mentioned.

You submit the following request:

"Since the construction of necessary service buildings is an important aspect of our highway program, we would appreciate your advice as to whether or not the Highway Commission has the authority to do all things necessary to the planning, contracting and constructing of buildings which are necessary to the construction and maintenance of the State Highway System without the supervision or approval of any other State agency or department.

The only statutes involved in answering your request are Chapters 4 and 5 (Articles 665-687), Title 20, V.A.C.S. which create a Public Buildings and Grounds Division (Chapter 4) and a Division of Design and Construction (Chapter 5) of the Board of Control. These statutes are not, in our opinion, applicable to buildings constructed by the Highway Department which are constructed in connection with and incidental to the construction of highways. Such statutes are intended to apply to those buildings which are authorized by law to be constructed as a public building and for which appropriation is made and which are for the general use of the public and do not apply to such buildings as the Highway Department may deem necessary to construct under its power to construct highways. It certainly cannot be said that if the Highway Department while constructing a highway, or being engaged in planning and designing a system of highways, should need an outhouse or a small building for storing tools would be required to have the Board of Control design such building as mentioned in Article 681, V.A.C.S. and other provisions of the above mentioned Title. The same would apply to any building such as one for the storing of materials, machinery, office supplies, or work space for the employees while engaged in the work of constructing a State Highway system.

As early as August 22, 1928, and as late as 1953 (Opinion S-105) the Attorney General has held that the Highway Department has authority to construct buildings as above mentioned in furtherance of public road construction and the establishment of the system of State Highways. For approximately thirty years this has been done and neither the Board of Control nor any other agency has ever taken or assumed the authority to supervise or design any buildings so constructed by the Highway Department.

We see no reason to overrule either of the prior decisions by this department and the long departmental construction of the matter.

Mr. D. C. Greer, page 3 (WW-237)

You are, therefore, advised that the Highway Commission has the authority to do all things necessary to the planning, contracting and construction of buildings which are necessary to the construction and maintenance of the State Highway system without the supervision or approval of any other State agency or department.

SUMMARY

The Highway Commission has the authority to do all things necessary to the planning, contracting and construction of buildings which are necessary to the construction and maintenance of the State Highway system without the supervision or approval of any other State agency or department.

WILL WILSON
Attorney General of Texas

By


H. Grady Chandler
Assistant

HGC:pc

APPROVED:

OPINION COMMITTEE:

J. C. Davis, Jr., Chairman

Wm. R. Hemphill

Marvin R. Thomas, Jr.

Ralph R. Rash

REVIEWED FOR THE ATTORNEY GENERAL

BY:

Geo. P. Blackburn