



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

February 8, 1961

The Honorable E. B. Clark, Sr.  
Chairman, Board of Regents  
Midwestern University  
Wichita Falls, Texas

Opinion No. WW-993

Re: Whether the Legislature  
has the authority to make  
appropriations out of the  
General Revenue Fund for  
capital improvements at  
Midwestern University.

Dear Mr. Clark:

You have requested an opinion from this office to determine whether the Legislature has the authority to make appropriations out of the General Revenue Fund for capital improvements at Midwestern University.

For purposes of clarification of your request, it has been set forth in full in this opinion:

"In Senate Bill 6 of the 56th session of the Legislature, creating Midwestern University as a State University, no provision was made for Capital Funds. Therefore, may we have your opinion on the following question: Is it permissible or does the Legislature have the authority to make appropriations out of the General Revenue Fund for Capital Improvements such as a new library here at Midwestern? We are not named in the Constitutional Building Amendment provision."

Since Midwestern University is not among institutions listed in Sections 17 and 18 of Article VII of the Texas Constitution, wherein the Legislature is prohibited from appropriating funds out of the General Revenue Fund for improvements, the Legislature does have the authority to pass a law authorizing an appropriation for improvements at Midwestern University.

As was pointed out in your letter, no provision was made for capital funds by the Legislature in Senate Bill 6, Acts of the Fifty-sixth Legislature, Regular Session, 1959, Chapter 147, Page 253, which means there is no pre-existing law which is required under the provisions of Section 44, Article III of the Texas Constitution before a valid appropriation can be made. Austin National Bank v. Sheppard, 123 Tex. 272, 71 S.W.2d 242 (1934); Fort Worth Cavalry Club v. Sheppard, 125 Tex. 339, 83 S.W.2d 660 (1935).

Section 44 of Article III, Texas Constitution, provides as follows:

"The Legislature . . . shall not . . . grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law."

In order to meet this requirement of pre-existing law, it would be necessary for the Legislature to pass a law authorizing capital improvements for Midwestern University. At that time, the Legislature would be authorized to make an appropriation based on the pre-existing law for capital improvements at the University.

It is our opinion that Midwestern University is not covered by the provisions of Sections 17 and 18 of Article VII of the Texas Constitution and that the Legislature would have the authority to appropriate funds out of the General Revenue Fund, once it has passed a law authorizing such capital improvements at Midwestern University.

#### S U M M A R Y

The Legislature will have the authority to make appropriations out of the General Revenue Fund for capital improvements at Midwestern University upon passing a law authorizing such capital improvements,

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since Midwestern University is not governed by the provisions of Sections 17 and 18 of Article VII of the Texas Constitution.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
John C. Steinberger  
Assistant

JCS:ms

APPROVED:

OPINION COMMITTEE  
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C. Dean Davis  
Joe Allen Osborne

REVIEWED FOR THE ATTORNEY GENERAL

BY: Morgan Nesbitt