



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CAREE
ATTORNEY GENERAL**

April 14, 1964

Lt. Col. Harry B. Kelton
Texas National Guard Armory ~~Guard~~ *Board*
West Austin Station
Austin 31, Texas

Opinion No. C-242

Re: Whether property in the custody of the Adjutant General is required to be transferred by the Adjutant General to the Texas National Guard Armory Board under the facts submitted.

Dear Colonel Kelton:

Your request for an opinion reads as follows:

"The Texas National Guard Armory Board has constructed a National Guard armory at Camp Wolters and an administrative building at Camp Mabry and contemplates the construction of one or more armories at Camp Mabry in the near future; all such construction is on sites provided by the Adjutant General of Texas.

"The armory constructed at Camp Wolters and the ones to be constructed at Camp Mabry are financed out of funds derived from the sale of bonds under the Armory Board's Trust Indenture and are leased or to be leased to the Adjutant General pursuant to Article 5786, V.C.S.

"The administrative building at Camp Mabry was constructed from the proceeds of the sale of an armory at Waco (formerly Grand Lodge Building) and is not the subject of any lease.

" . . .

"At the present time both the Armory Board administrative building at Camp Mabry and the

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armory building at Camp Wolters are carried on the Armory Board inventory whereas the land remains on the State Property Inventory as property of the Adjutant General's Department.

"To enable us to properly comply with the provisions of Article 5786, V.C.S. and the provisions of the Armory Board Trust Indenture, should the land and buildings at Camp Wolters and Camp Mabry be formally conveyed to the Armory Board?

"Should such property be formally conveyed to the Armory Board to comply with the provisions of Article 6252-6, V.C.S.?"

Article 5790a, Vernon's Civil Statutes, reads as follows:

"For and on behalf of the State of Texas, the Adjutant General is authorized to designate and transfer any of the State-owned National Guard Camps and all land and improvements, buildings, facilities and installations, and personal property in connection therewith, or any part of the same, except Camp Mabry, Austin, Texas, to the Texas National Guard Armory Board, either for the purpose of administration thereof or for the purpose of sale or proper disposal otherwise when designated by the Adjutant General as 'surplus' or in excess of the needs of the Texas National Guard, its successors or components. The Adjutant General is authorized prior to declaring the above-described property as 'surplus' and transferring same to the Texas National Guard Armory Board, to remove, sever, dismantle, or exchange any of said property for the use and benefit of the Texas National Guard or its successors." (Emphasis added)

These provisions were amended in 1963 by the Legislature and are now codified as Section 5 of Article 5781, Vernon's Civil Statutes, which reads as follows:

"For and on behalf of the State of Texas the Adjutant General is authorized to designate

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and transfer any of the state-owned National Guard camps and all land and improvements, buildings, facilities, and installations and personal property in connection therewith, or any part of the same, to the Texas National Guard Armory Board, either for the purpose of administration thereof or for the purpose of sale or proper disposal otherwise when designated by the Adjutant General as 'surplus' or in excess of the needs of the Texas National Guard, its successors or components. The Adjutant General is authorized prior to declaring the above described property as 'surplus' and transferring same to the Texas National Guard Armory Board, to remove, sever, dismantle, or exchange any of said property for the use and benefit of the Texas National Guard or its successors."

It is noted that the exception applicable to Camp Mabry was not carried forward in the 1963 amendment.

Section 4 of Article 5781, Vernon's Civil Statutes, provides:

"The Adjutant General shall be in control of the military department of this state and subordinate only to the Governor in matters pertaining to said Department, or the military forces of this state; and he shall perform such duties as the Governor may from time to time entrust to him relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this state; and he shall conduct the business of the Department in such manner as the Governor shall direct. He shall have the custody and charge of all books, records, papers, furniture, fixtures, and other property relating to his Department, and shall perform as near as practicable, such duties as pertain to the Chiefs of Staff of the Army and Air Force and the Secretaries of the military services, under the regulations and customs of the United States Armed Forces.

"For and on behalf of the State of Texas, the Adjutant General is authorized to execute

leases or subleases between the State of Texas, as lessee or sublessee, and the Texas National Guard Armory Board, as lessor or sublessor, for any building or buildings and the equipment therein and the site or sites therefor to be used for armory and other proper purposes, and to renew such leases or subleases from time to time; and the Adjutant General shall not lease or sublease any property for armory purposes in or about any municipality from any person other than the Texas National Guard Armory Board, so long as adequate facilities for such armory purposes in or about such municipality are available for renting from the Texas National Guard Armory Board."

The powers of the Texas National Guard are stated in Section 7 of Article 5786, Vernon's Civil Statutes. Paragraph (7) of subdivision (b) of Section 7 of Article 5786 grants the following powers to the Texas National Guard Armory Board:

"To construct buildings on any of its real property, whether held in fee simple or otherwise, and to furnish and equip the same and to hold, manage and maintain all of said property and to lease to the State of Texas in the same manner as hereinafter provided with respect to other property, the buildings, and the sites thereon situated, which it may construct at Camp Mabry, Camp Hulén and Camp Wolters, and to lease and sublease, convey and exchange, in whole or in part, all of its property not located in either of said camps, and/or to pledge the rents, issues and profits of all of said property, wherever located, in whole or in part; provided, however, that before any building is constructed by said Board on the lands comprising either of said camps, the site therefor, in maximum area two hundred thousand (200,000) square feet, shall, promptly on said Board's request therefor to the said Adjutant General, be selected and described by a Board of Officers appointed from time to time for the purpose by the said Adjutant General, and such description shall be certified to said Armory Board and a copy thereof shall be furnished to and preserved in the office of said Adjutant General; and

provided further, that when so selected and described and constructed upon, such sites shall be and become the property of the said Armory Board, for all the purposes contemplated by the Act of which this Section is a part, as fully and absolutely as if the same had been acquired by a gift to or purchase by said Armory Board.

"All such property, together with the rents, issues and profits thereof shall be exempt from taxation by the State of Texas or by any municipal corporation, county or other political subdivision or taxing district of this state."

In view of the foregoing, you are advised that such sites become property of the Armory Board as a matter of law, when selected in accordance with the provisions of paragraph (7) of subdivision (b) of Section 7 of Article 5786, and constructed upon. Therefore, it is not necessary that such property be formally conveyed to the Armory Board.

SUMMARY

Where armories are constructed on sites at Camp Mabry, Camp Hulen and Camp Wolters, pursuant to the provisions of paragraph (7) of subdivision (b) of Section 7 of Article 5786, Vernon's Civil Statutes, such property becomes the property of the Armory Board as a matter of law, and no formal conveyance by the Adjutant General is required.

Yours very truly,

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By *John Reeves*
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JR:ms:sj

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APPROVED:
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