



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

December 10, 1965

Honorable Harry B. Kelton, Director
Texas National Guard Armory Board
West Austin Station
Austin, Texas 78703

Opinion No. C-565

Re: Whether Senate Bill
No. 109, Acts 59th
Legislature, 1965,
was repealed by House
Bill No. 410, Acts
59th Legislature, 1965.

Dear Sir:

Your letter of November 17, 1965, requesting our opinion relative to the above captioned matter reads as follows:

"Prior to the conclusion of the last Session of the Texas Legislature, the Texas National Guard Armory Board was authorized to sell and otherwise dispose of property which it owned in the event it was encumbered by debt but was not so empowered in the event such real property was debt free. See Attorney General's Opinion WW-460.

"The 59th Legislature first enacted S. B. 109 which specifically authorized the Armory Board to dispose of certain lands and buildings which were surplus to and in excess of the needs of the Armory Board and where federal recognition had been withdrawn from the unit occupying such armory. The emergency clause of S. B. 109 referred specifically to Attorney General's Opinion WW-460 as creating the necessity for suspending the Constitutional rule.

"Thereafter, the 1965 Legislature also passed H. B. 410 which recodified all of the laws pertaining to the National Guard and Armory Board, re-enacting, in substance, Section 7 of Art. 5786 without including the amendment thereof contained in S. B. 109 as intended by the sponsor as well as the Legislature.

"Will you please give us your opinion as to whether the enactment of H. B. 410 by implication repealed the provisions of S. B. 109?"

Former Article 5786, as originally enacted by Acts 1905, p. 167, was repealed by Acts 1963, 58th Leg., ch. 112, p. 209 (S.B. No. 279). Chapter 3, Title 94 of the Revised Civil Statutes of Texas, 1925, was amended and revised to read as follows:

"Article 5786. General Provisions.

". . .

"Sec. 7. . . .

"(c) As and when any of the property owned by the Board shall be fully paid for, free of all liens, and all debts and other obligations incurred in connection with the acquisition or construction of such property have been fully paid, the Board may donate, transfer, and convey such property, by appropriate instruments of transfer, to the State of Texas, and such instruments of transfer and conveyance shall be kept in the custody of the Adjutant General's Department."
(Emphasis added)

The Attorney General of Texas in Opinion WW-460 has held that the Texas National Guard Armory Board is not authorized by existing Statute to dispose of property when the indebtedness against any such property obtained by the Board for armory purposes is extinguished and that such disposition is under the direct control of the Legislature of the State of Texas.

S. B. No. 109 (Acts 1965, 59th Leg., ch. 28, p. 75) amended Section 7 of Article 5786, Senate Bill 279 of the 58th Legislature, by providing a new subsection to be known as Subsection (g). Subsection (g) reads as follows:

"(g) When Federal recognition of a unit or units of the Texas National Guard is withdrawn by the United States Government and personnel are not available for its successors or components to occupy the land, buildings and other improvements owned by the Armory Board; the Adjutant General shall designate such property as surplus to the needs and requirements of the National Guard, its successors and components and notify the Armory Board of his intention to vacate the property and terminate any existing lease agreement with the Armory

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Board in accordance with the terms of such agreement. Upon receipt of such designation and notice from the Adjutant General, the Armory Board and the Board of Control are hereby authorized to sell to the highest bidder for cash in the manner provided by law for the sale of property belonging to the State which is no longer needed, and. . ." (Emphasis added)

H. B. No. 410, (Acts 1965, 59th Leg., ch. 690, p. 1601) amended Chapters 1 and 2, Title 94, Revised Civil Statutes of Texas to read as follows:

"Article 5767. Texas National Guard Armory Board.

". . .

"Section 7. As and when any of the property owned by the Board shall be fully paid for, free of all liens, and all debts and other obligations incurred in connection with the acquisition or construction of such property have been fully paid, the Board may donate, transfer, and convey such property, by appropriate instruments of transfer, to the State of Texas, and such instruments of transfer and conveyance shall be kept in the custody of the Adjutant General's Department."

In the Repealer clause of H. B. 410, it is specifically stated as follows:

". . . Sections 7 and 8, Article 5786, Revised Civil Statutes of Texas, as amended; . . . and Section 7 through Section 8 of Article 5786, Chapter 112, Acts of the 58th Legislature (compiled as Section 7 through Section 8 of Article 5786, Revised Civil Statutes of Texas, as amended); are hereby repealed and all other laws or parts of laws in conflict with this Act are repealed to the extent of such conflict only."

S. B. No. 109 of the 59th Legislature was approved March 16, 1965 and H. B. No. 410 of the 59th Legislature was approved June 18, 1965. S. B. No. 109 authorized the Armory Board to sell to the highest bidder for cash any property designated surplus to the needs and requirements of the National Guard, its successors and components. H. B. No. 410 recodifies

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all of the laws pertaining to the National Guard and Armory Board, and re-enacts, in substance, Section 7 of Article 5786 without including the amendment thereof contained in S. B. No. 109. It is plain, as evidenced by Attorney General's Opinion No. WW-460, that by the provisions of Section 7, the Legislature intended to obtain direct control of the armories acquired or constructed by the National Guard Armory Board and utilized by Texas National Guard units once the armories were free and clear of the incumbrances of acquisition and construction.

In conclusion, it is our opinion that H. B. No. 410 specifically repeals Section 7 of Article 5786, Revised Civil Statutes of Texas, as amended. Therefore, the latter act, H. B. No. 410, being the latest expression of the Legislature, will prevail over S. B. No. 109.

S U M M A R Y

H. B. No. 410 specifically repeals Section 7 of Article 5786, Revised Civil Statutes of Texas, as amended, and therefore the latter act, H. B. No. 410 being the latest expression of the Legislature, will prevail over S. B. No. 109.

Very truly yours,

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By: *Alan Minter*
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APPROVED:
OPINION COMMITTEE

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