



The Attorney General of Texas

December 2, 1980

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Mr. Dorman H. Winfrey
Director and Librarian
Texas State Library
P. O. Box 12927, Capitol Station
Austin, Texas 78711

Opinion No. MW-284

Re: Responsibility of Texas State
Library for works of art in the
Capitol

Dear Mr. Winfrey:

You have requested our opinion regarding the proper custody of works of art located in the State Capitol. Article 5438, V.T.C.S., provides:

The custody and control of books, documents, newspapers, manuscripts, archives, relics, mementos, flags, works of art, etc., and the duty of collecting and preserving historical data, is under the control of the [Library and Historical] Commission. The gallery of the portraits of the Presidents of the Republic and the Governors of this State constitutes a part of the State Library. All books, pictures, documents, publications and manuscripts, received through gift, purchase or exchange, or on deposit, from any source, for the use of the State, shall constitute a part of the State Library, and shall be placed therein for the use of the public.

Similarly, article 5441, V.T.C.S., provides, in pertinent part:

He [the State Librarian] shall preserve all historical relics, mementos, antiquities and works of art connected with and relating to the history of Texas, which may in any way come into his possession as State Librarian. He shall constantly endeavor to build up an historical museum worthy of the interesting and important history of this State.

On the other hand, section 4.01(a) of article 601b, V.T.C.S., the State Purchasing and General Services Act, declares that the State Purchasing and General Services Commission, formerly the Board of Control:

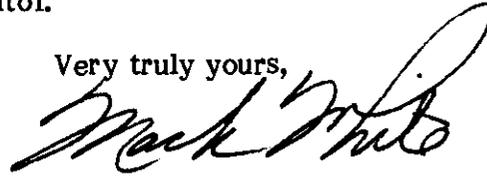
shall have charge and control of all public buildings, grounds and property of the state, and is the custodian of all public personal property, and is responsible for the proper care and protection of such property from damage, intrusion, or improper usage.

Attorney General Opinion O-3766 (1941), without referring to the statutes specifying the duties of the Library and Historical Commission and the State Librarian, held that permission to reproduce a painting in the Senate Chamber must be obtained from the Board of Control. In our opinion, however, any conflict between these statutes is best resolved by applying the rule of construction that a special statute prevails over a more general one relating to the same subject. Shanken v. Wolfman, Inc., 370 S.W. 2d 197, 200 (Tex. Civ. App. - Houston 1963, writ ref'd n.r.e.); GMC Superior Trucks, Inc. v. Irving Bank & Trust Co., 463 S.W. 2d 274, 276 (Tex. Civ. App. - Waco 1971, no writ); City of Irving v. Dallas County Flood Control District, 377 S.W. 2d 215, 221 (Tex. Civ. App. - Tyler), rev'd on other grounds, 383 S.W. 2d 571 (Tex. 1964). In our opinion, therefore, the Library and Historical Commission is the custodian of works of art in the State Capitol.

S U M M A R Y

The Library and Historical Commission is the custodian of works of art in the State Capitol.

Very truly yours,



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