



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 7, 2020

The Honorable John P. Cyrier
Chair, House Committee on Culture,
Recreation & Tourism
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0325

Re: Whether section 2166.003 of the Government Code applies to the possible removal of the Lawrence Sullivan Ross statue at Texas A&M University, and if so, who may provide approval to remove the statue (RQ-0361-KP)

Dear Representative Cyrier:

You ask about the authority of Texas A&M University to take certain actions related to the Lawrence Sullivan Ross statue (“the Ross statue”), located in the Academic Plaza in the middle of the University’s campus.¹ As background, you explain that public controversy exists over whether the statue should remain on campus or be removed. Request Letter at 1. You also explain that the president of Texas A&M University announced the creation of a “Commission on Historic Representation to review statues, monuments, buildings and other representations on its campus and suggest appropriate courses of action with respect to each,” including the Ross statue. *Id.* at 1–2. You question the University’s ability to take independent action to remove or relocate the statue from its current location. *Id.* at 2.

You first ask whether chapter 2166 of the Government Code applies to the Ross statue. *Id.* at 2. Chapter 2166 addresses state building construction and acquisition, and disposition of real property. *See* TEX. GOV’T CODE §§ 2166.001–.554. Relevant to your question, chapter 2166 includes a provision related to the removal of monuments and memorials that honor a Texas citizen for military or war-related service. *See id.* § 2166.5011. With some exceptions, chapter 2166 does not apply to projects for state institutions of higher education, including Texas A&M University, stating: “*Unless otherwise provided*, this chapter does not apply to . . . a project constructed by and for a state institution of higher education.” *Id.* § 2166.003(a)(2) (emphasis added).

¹*See* Letter from Honorable John P. Cyrier, Chair, House Comm. on Culture, Recreation & Tourism, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (June 24, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0361KP.pdf> (“Request Letter”).

Section 2166.5011 of the Government Code provides:

(a) In this section, “monument or memorial” means a permanent monument, memorial, or other designation, including a statue, portrait, plaque, seal, symbol, building name, or street name, that:

- (1) is located on state property; and
- (2) honors a citizen of this state for military or war-related service.

(b) *Notwithstanding any other provision of this code*, a monument or memorial may be removed, relocated, or altered only:

- (1) by the legislature;
- (2) by the Texas Historical Commission;
- (3) by the State Preservation Board; or
- (4) as provided by Subsection (c).

(c) A monument or memorial may be removed, relocated, or altered in a manner otherwise provided by this code as necessary to accommodate construction, repair, or improvements to the monument or memorial or to the surrounding state property on which the monument or memorial is located. Any monument or memorial that is permanently removed under this subsection must be relocated to a prominent location.

Id. § 2166.5011 (emphasis added). The Texas Supreme Court explained that when the Legislature uses the phrase “notwithstanding any other law,” as it did in subsection 2166.5011(b), it creates an “express, unambiguous conflicts-of-law provision.” *Molinet v. Kimbrell*, 356 S.W.3d 407, 413–14 (Tex. 2011). Thus, although chapter 2166 generally does not apply to projects for state institutions of higher education, section 2166.5011 applies to monuments or memorials of institutions of higher education, “notwithstanding” the general exemption from chapter 2166.

Whether section 2166.5011 applies to the Ross statue in particular depends on whether it qualifies as a “monument or memorial” as defined in subsection 2166.5011(a). “[M]onument or memorial means a permanent monument, memorial, or other designation, including a statue, portrait, plaque, seal, symbol, building name, or street name, that: (1) is located on state property; and (2) honors a citizen of this state for military or war-related service.” TEX. GOV’T CODE § 2166.5011(a). The Ross statue was erected in 1918 and is a permanent monument located on the Texas A&M University campus, which qualifies as state property. *See Walsh v. Univ. of Tex.*, 169 S.W.2d 993, 993 (Tex. App.—El Paso 1942, writ ref’d) (explaining that “property of the University of Texas is the property of the State”).

Section 2166.5011 applies only if the statue honors Ross for his “military or war-related service.” TEX. GOV’T CODE § 2166.5011(a)(2). Lawrence Sullivan Ross is a significant figure in Texas history and Texas A&M University history for a multitude of reasons. He was a prominent military leader for the Texas Rangers, the 19th Governor of Texas, a Confederate States Army General during the Civil War, and president of the Agricultural and Mechanical College, now Texas A&M University. The Legislature appropriated \$5,000 in 1917 to fund the statue of “*General* Lawrence Sullivan Ross,” suggesting that the Legislature funded the statue at least in part to honor Ross for his military or war-related service. Act approved June 5, 1917, 35th Leg., 1st C.S., ch. 49, 1917 Tex. Gen. Laws 244, 252 (emphasis added). And the inscription on the statue states: “Lawrence Sullivan Ross, 1838-1898, Soldier, Statesman, Knightly Gentleman; Brigadier General C.S.A., Governor of Texas, President of the A&M College.” Request Letter at 1. While the purposes for erecting the statue were likely multi-faceted, the language appropriating funds for the statue and the inscription both indicate that it was, in part, for military or war-related service. Thus, the statue likely qualifies as a “monument or memorial” under subsection 2166.5011(a). See Tex. Att’y Gen. Op. No. KP-0224 (2018) at 2 (recognizing that the Children of the Confederacy plaque previously displayed in the Texas Capitol served multiple purposes, including honoring individuals for war-related service, and thereby qualified as a monument or memorial under subsection 2166.5011). Because the statue is located on state property and honors a Texas citizen for military service, Texas A&M University must comply with the requirements of section 2166.5011 before removing or relocating the Ross statue.

Assuming section 2166.5011 applies to the University, you next ask which entities may grant approval to remove or relocate the statue from its current location. Request Letter at 2. Under subsection 2166.5011(b), a monument or memorial may generally only be removed, relocated, or altered by the Legislature, the Texas Historical Commission, or the State Preservation Board. TEX. GOV’T CODE § 2166.5011(b). However, subsection (c) provides that the statue may be moved “as necessary to accommodate construction, repair, or improvements to the . . . surrounding state property on which the monument or memorial is located.” *Id.* § 2166.5011(c). Any monument or memorial permanently removed under subsection 2166.5011(c) “must be relocated to a prominent location.” *Id.* To the extent that the University determined it necessary to move the statue to accommodate improvements to the property where the statue is currently located, subsection (c) provides authority to relocate the statue to a prominent location elsewhere without approval from another state entity as outlined in subsection (b).²

Absent a decision to relocate the statue under subsection 2166.5011(c), Texas A&M University must receive permission to do so under subsection 2166.5011(b). *Id.* § 2166.5011(b). Subsection 2166.5011(b) lists three separate entities with general authority to remove monuments and memorials under that section. But whether those entities possess authority to remove a specific

²In 2015, the University of Texas removed a statue of Jefferson Davis from a monument on the Main Mall and subsequently relocated it to the University’s Briscoe Center for American History. The Sons of Confederate Veterans sought a declaratory judgment that the University violated Government Code section 2166.5011 for failing to obtain permission from one of the entities listed in subsection (b). The merits of that lawsuit were never decided, as a district court determined the plaintiffs lacked standing. *Bray v. Fenves*, No. 06-15-00075-CV, 2016 WL 3083539, at *14 (Tex. App.—Texarkana Mar. 24, 2016, pet. denied).

monument or memorial must be evaluated on a case-by-case basis, considering the jurisdiction of each entity in relation to the monument or memorial in question.

Subsection 2166.5011(b)(1) authorizes the Legislature to remove or relocate monuments or memorials, and it possesses clear authority to approve a request by Texas A&M University to remove or relocate the Ross statue. *Id.* § 2166.5011(b)(1). Thus, the Legislature could adopt a resolution or enact legislation authorizing removal or relocation of the Ross statue.

Subsection 2166.5011(b) also authorizes the State Preservation Board and the Texas Historical Commission to remove a monument or memorial. *Id.* § 2166.5011(b)(2)–(3). However, the Legislature limited the jurisdiction of those entities in other statutes. The general powers and duties of the State Preservation Board involve “the Capitol, the General Land Office Building, their contents, and their grounds,” and other Capitol-area historic sites. *Id.* § 443.007(a)(1); *see also id.* §§ 443.029 (Governor’s Mansion), 443.025 (Woodlawn). While the State Preservation Board would possess authority to remove a monument or memorial located on those grounds, it does not possess express authority to operate outside of those areas, including on the campuses of institutions of higher education.

The Texas Historical Commission’s authority extends beyond the Capitol area, and the Legislature entrusted it with historic sites throughout the State. *See id.* § 442.005(u)(1) (“The commission may . . . maintain the historic character of the sites and structures entrusted to its care . . .”). The Commission would possess authority to remove monuments and memorials located on those historic sites, but the statue in question is not located on a Commission-administered historic site. The Commission also possesses authority over state antiquities landmarks and state archeological landmarks, which the Commission designates and which receive legal protection under the Antiquities Code. *See generally* TEX. NAT. RES. CODE §§ 191.001–.174. But the Commission has not designated the Ross statue as such a landmark. Thus, the Commission does not possess express authority to remove or otherwise make decisions regarding the Ross statue. Given the limited jurisdiction of the State Presentation Board and the Texas Historical Commission, and their lack of authority over the Ross statue, a court is unlikely to find either of those entities possess authority to approve a request by Texas A&M to remove or relocate the Ross statue.

S U M M A R Y

Section 2166.5011 of the Government Code establishes requirements for the removal or relocation of a monument or memorial located on state property that honors a Texas citizen for military service. Because the Lawrence Sullivan Ross statue on the campus of Texas A&M University is located on state property and honors Ross at least in part for his military service, a court is likely to conclude that Texas A&M University must comply with the requirements of section 2166.5011 before removing or relocating the Ross statue.

Pursuant to subsection 2166.5011(c), Texas A&M University may move the Ross statue if needed to accommodate construction, repair, or improvements to the surrounding property, but if permanently removing the statue, the University must relocate it to a prominent location. Otherwise, only the Legislature may authorize removal or relocation of the Ross statue. While subsection 2166.5011(b) also provides the Historical Commission and the State Preservation Board with general authority to remove monuments or memorials, a court is unlikely to conclude that those entities possess authority to remove the Ross statue because Texas A&M University lies outside their respective jurisdictions.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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