



RUSSELL W. MALM
MIDLAND COUNTY ATTORNEY
 200 W. Wall St., Suite 104
 Midland, Texas 79701
 (915) 688-1086
 FAX (915) 688-1092

OFFICE OF THE ATTORNEY GENERAL
Executive Administration (001)
 P. O. Box 12548
 Austin, TX 78711

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Liz Robinson

September 23, 1999

The Honorable John Cornyn
 Attorney General
 209 W. 14th St.
 Austin, TX 78701

RQ-0114-JC

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Dear Attorney General Cornyn:

Opinion Committee

In my capacity as Midland County Attorney, I ask your opinion in regard to the following legal questions of constitutional significance. In House Bill 1 of the 76th Legislature, the General Appropriations Act for the state fiscal biennium ending August 31, 2001, the sum of \$1.25 million of general revenue is appropriated each fiscal year "for the purpose of constructing a building to house the Presidential Museum on a leased portion of the University of Texas of the Permian Basin campus." (Page III-79.)

I understand the presidential museum is a private collection of presidential memorabilia now housed in private space. Under the appropriations bill, the private board governing that collection would be responsible for the operations of the museum and, presumably, paying rent to UTPB for the use of the leased space.

This appropriation raises two questions:

- Does the appropriation of general revenue for the construction of the museum building violates Section 18 (I), Article VII, Texas Constitution?
- If the appropriation is valid and the university constructs the building, what legal standard applies to determining the amount of rent the presidential museum must pay to UTPB for the lease of the building?

The University of Texas of the Permian Basin is governed by Chapter 72, Education Code, which provides that the university is governed by the board of regents of The University of Texas System and is a "fully state-supported coeducational institution of higher education." (Sec. 72.01, Education Code.) The university is listed in Section 18(b), Article VII, Texas Constitution, as a component institution of The University of Texas System and benefits from bonds payable from the available university fund, the proceeds of which may be used for constructing and equipping buildings.

Section 18(I) of Article VII provides, in applicable part:

The ... institutions of higher education designated in this section may not receive any funds from the general revenue of the state for ... constructing or equipping buildings or other permanent improvements ... except that:

(1) in the case of fire or natural disaster the legislature may appropriate from the general revenue and amount sufficient to replace the uninsured loss of any building or other permanent improvement; and

(2) the legislature, by two-thirds vote of each house, may, in cases of demonstrated need, which need must be clearly expressed in the body of the act, appropriate general revenue funds for ... constructing or equipping buildings or other permanent improvements ...

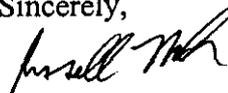
Neither of the two exceptions of Section 18(I) appears applicable to the construction of the presidential museum at UTPB. It is reasonably clear that the building will not replace a building lost to fire and natural disaster. Additionally, House Bill 1 did not contain an expression of demonstrated need for this purpose and did not pass the senate by a two-thirds vote (House Bill 1 passed the senate on a voice vote). Under these circumstances, it appears that the \$1.25 million appropriation to UTPB for a presidential museum violates the state constitution.

Although certain Attorney General opinions and Texas Appellate cases have interpreted Section 18, Article VII of the Texas Constitution, I have not found any that have directly addressed paragraph (i) of Section 18.

With regard to my second question, Sec. 51, Article III of the Texas Constitution provides that "The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever. . ." The Attorney General has previously ruled that an agreement providing for rental or lease payments at less than fair market value would amount to a gift or grant of public money in violation of the Texas Constitution. *Tex. Atty. Gen. Op. LO 97-030*. Therefore, it is our belief that the lease payments could not be for less than fair market value.

The fiscal year for which these funds are appropriated begins September 1, 1999. Your prompt answer to these questions may prevent the university from obligating funds under what may be ultimately determined to be an invalid appropriation.

Sincerely,



Russell W. Malm

RWM/cb

cc: Tom Craddick