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COMMISSION

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ANTHROPOLOGY COMMITTEE

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711

FILE # ML-42103-01
I.D. # 42103

Dear General Cornyn:

I request your official opinion on the status of certain objects in, on, under, or removed from land belonging to the State of Texas or political subdivisions of the State of Texas.

In 1969, the Texas Legislature passed the Antiquities Code of Texas. Acts 1969, 61st Leg., 2d C.S., chap. 2. That Code claimed for the State sunken or abandoned ships and shipwrecks, artifacts, and various other buildings, objects, and locations "within the jurisdiction of the State of Texas:

All sunken or abandoned pre-twentieth century ships and wrecks of the sea and any part or the contents thereof and all treasure imbedded in the earth, located in, on or under the surface of lands belonging to the State of Texas, including its tidelands, submerged lands and the beds of its rivers and the sea within the jurisdiction of the State of Texas are hereby declared to be State Archeological Landmarks and are the sole property of the State of Texas and may not be taken, altered, damaged, destroyed, salvaged or excavated without a contract or permit of the Antiquities Committee. Tex. Rev. Civ. Stat. art. 6145-9. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4).

This law was later amended to claim objects under land "belonging to the State of Texas or to any county, city, or political subdivision of the state. . . ." Tex. Nat. Res. Code § 191.092, adopted by Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1.

In addition, the Penal Code of 1925, art. 147b, contained a provision regulating the exploration for archeological objects within the State, although not specifically claiming ownership for the State. This evidences some measure of state control over the archeological resources of the State.

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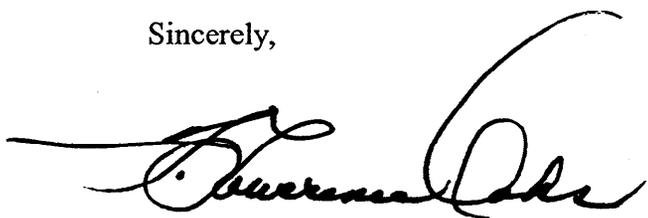
The Texas Historical Commission is the legal custodian of these objects for the State of Texas. Tex. Nat. Res. Code § 191.051. This provision was previously construed by Att'y Gen'l Opn. No JM-104 (1983), but that opinion declined to address certain issues now of importance to the Commission. In particular, it did not address the claim of the State to objects found on municipal land.

In light of this, I now ask for your opinion on the following questions:

1. Does the State of Texas own artifacts that were removed from State lands prior to the effective date of the Antiquities Code in 1969?
2. Does the State of Texas own artifacts that have been removed from city, county, or other political subdivisions' land, either prior to the effective date of the amendment to the Antiquities Code in 1977, or subsequently?
3. If it is determined that the State of Texas owns artifacts that were removed from State and/or other governmental lands prior to the effective date of the Antiquities Code of 1969, is the THC legal custodian of items not described in that law?
4. Does the Penal Code of 1925 evidence an intent on the part of the State to claim the artifacts as of the date of passage of that law, and have the effect of giving the State a claim to them as of its effective date?

I would appreciate your consideration of these questions and the issuance of an opinion on them.

Sincerely,



F. Lawrence Oaks
Executive Director