



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Clark Wright
State Board of Control
Austin, Texas

Dear Sir:

Opinion No. 0-564
Re: Effect of House Concurrent
Resolution No. 66, 42nd
Legislature, Regular Ses-
sion, page 946.

We have yours of recent date in which you submit
the following question:

"When the Board of Control receives bids
on cement for the State Highway Department from
lumber yards in locality where the cement is to
be delivered, the prices are the same or prac-
tically the same, as based on retail prices for
cement sold by the lumber yard to its retail
trade, and, at the same time receives a bid on
foreign cement at a lower price which, in the
opinion of the Board of Control, is offered to
the state at a competitive price, does the reso-
lution prohibit the Board of Control from exer-
cising its discretion in finding the bids on the
American made cement to be unsatisfactory because
they are apparently non-competitive and buying
the foreign cement on low bid, or would the Board
of Control, under the resolution, be compelled to
purchase American Cement by accepting what, in
its opinion, is an arbitrary and improper bid."

The resolution referred to in the question after
leaving out the preamble is:

"Resolved that it is hereby declared to be
the policy of the State of Texas to require the
use of American made materials in the construc-
tion of roads, bridges, and public buildings in
all state departments and engineers are hereby
requested to hereby specify goods of American
manufacturers in their specifications for roads,
bridges and public buildings."

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Article 646, Revised Statutes, is:

"The Board shall in all cases reserve the right to reject or accept any and all bids, or reject in part if it prefers, and in such case they may buy in the open market until a satisfactory bid is offered."

Evidently, the purpose of the legislature in establishing first the state purchasing agent and later the State Board of Control was to secure for the state the best prices possible.

Our Supreme Court has recently in *Caples v. Cole*, 104 S. W. ^(2d) 203, 129 Tex. 370, decided the effect of resolutions by the use of the following language:

"It is plain that the resolution not only undertakes to interpret or construe what the original act contained but also to read into said law words and intentions not expressed in the original act. Statutes cannot be amended in that manner. Resolutions play their part in our legislative history, and are often resorted to for the purpose of expressing the will of the legislature, but statutes cannot be amended by resolution. Statutes may be interpreted or construed by the same or succeeding legislatures in the manner provided by the constitution and while such procedure is not controlling it is persuasive with the courts in construing statutes. The constitution has clearly prescribed the methods to be pursued in the enactment of laws and their amendments. The resolution does not meet the requirements prescribed by the constitution and, therefore, cannot be considered as amending the 1931 act. We must interpret the original act as written."

Again in the *City of Waco v. McCraw*, 97 S. W. (2) 717, 127 Tex. 268, the court says:

"It is true that it is proper to look to all parts of the legislative act, including the body of the act, the caption and the emergency clause to ascertain the legislative intent, and when such intent is once ascertained, it is the law. In spite of this rule, we think the words

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of the emergency clause to Chapter 453, supra, were not intended as a limitation on the act itself but merely express the construction placed by that legislature on an act passed by a prior legislature. Such legislative construction is not controlling; on the other hand, it is entitled to very little weight."

In numerous decisions the courts have laid down the rule that the public policy of a state must be determined by its constitution, laws and judicial decisions and that a state has no public policy properly cognizable by the courts which is not derived, or derivable by clear implication, from the established laws of the state as found in its constitution, statutes and judicial decisions. See 50 C. J. 859, Wyllie Overland Co. v. Chapman, 206 S. W. 978, Straus and Company v. Canadian Pacific Railway Company, 173 N. E. 564, and Weeks v. New York Life Insurance Company, 35 A. L. R. 1482.

We, therefore, answer your question by stating that the resolution referred to in your letter does not have the effect of amending or modifying the statutes of the state in anywise and that a resolution cannot establish the public policy of the state, but that the public policy of this state is established by its statutes, constitution and court decisions and, therefore, so far as the State Board of Control is concerned, its duties are set out and the limits of its powers are prescribed in the statutes and that this duty and this power is not in anywise changed by the resolution. In other words, the State Board of Control has the same powers and the same discretion which was vested in it prior to the passage of the resolution.

The Opinion of this department dated May 25, 1938, referred to in your inquiry is modified so as to conform to this opinion. However it should be stated that in that Opinion the constitutional question as to the force and effect of a resolution was not considered.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Albert S. Rollins*
Albert S. Rollins
Assistant

APPROVED AUG 28, 1939

ASR:FL

Ernest B. Mann
ATTORNEY GENERAL OF TEXAS

