

Children of the Confederacy Plaque Timeline

1959 Children of the Confederacy Creed plaque is authorized by the 56th Legislature via HCR 104 for the Capitol (see Attachment 1). The concurrent resolution was adopted by the House, May 8, 1959, then by the Senate, May 12, and was signed by the Governor on May 30, and filed with the Secretary of State, June 1, 1959. The organization referred to in HCR 104, the Texas Division, Children of the Confederacy, is an auxiliary of the Texas Division of the United Daughters of the Confederacy. The United Daughters of the Confederacy is a 501(c)(3) charitable non-profit organization based in Richmond, Virginia. The organization paid for the fabrication of the plaque and it was installed during their state convention around August 7, 1959, under the auspices of the Board of Control¹. The HCR specifically allows the Children of the Confederacy:

- (1) to dedicate and install a plaque in the State Capitol and
- (2) set forth their creed.

1/28/1993 Children of the Confederacy Creed plaque was taken down from the southwest archway leading from the south foyer into the rotunda and placed in storage during the Capitol restoration project.

4/14/1995 Restored Creed plaque installed in the northeast hallway near the rotunda.

¹The Capitol has been under the authority of several state agencies, namely: the Superintendent of Buildings and Grounds; the Board of Control, and its successor entity the State Purchasing & General Services Commission (which is now known as the Texas Facilities Commission). In 1983, the Legislature began transferring responsibility for the capitol and its artifacts from the aforementioned entities to the SPB.

TSLAC statement

From: Mark Smith [<mailto:msmith@tsl.texas.gov>]
Sent: Thursday, November 02, 2017 9:25 AM
To: Leslie Pawelka
Subject: TSLAC statement

Hi, Leslie,

Here is the statement we wrote to respond to any media inquiries. As I mentioned, our commission and the governor's office have approved this statement. We have not had to use it as yet:

The Texas State Library and Archives Commission (TSLAC) works to preserve and document the vast and diverse history of the state and its government. The Commission works under the jurisdiction of the State Legislature and Office of the Governor. The Lorenzo de Zavala State Archives and Library Building at 1201 Brazos Street in Austin is under the administration of the Texas Facilities Commission, which oversees all exterior and physical plant resources, including the façade of the building and any exterior displays, flags, and symbols.

TSLAC is charged with preserving and making available state records and other historical resources that document the history and culture of Texas as a province, colony, republic, or state. The Commission will continue working with the state's leadership to safeguard the state's historical records and to respond to the information needs of people throughout the state.

Mark

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From: [Vaughn Aldredge](#)
To: [Roderick Welsh](#); [Christopher Currens](#)
Subject: FW: THC guidance regarding removal of monuments
Date: Wednesday, October 25, 2017 3:38:29 PM
Attachments: [Civil War monuments 090617.pdf](#)

FYI the THC guidance document is attached (and see email below). I mentioned this today because Ross asked about monuments in the context of Sen Kolkhorst's sitting on the Preservation Board. One of your members has this, so you should have it also.

BTW, THC has an agency wide perspective that encourages use of 'Civil War' as the significant event in Texas history; i.e. we don't use Confederate or Confederacy as synonyms.

But we do manage the Confederate Reunion Grounds State Historic Site in Limestone County as well as the Sabine Pass Civil War Battleground south of Port Arthur and the Sam Bell Maxie House in Paris. He was a Civil War officer but then later a two-term U.S. Senator.

And we were not asked for permission prior to removal of monuments recently in city parks in San Antonio and Dallas. Those City Attorneys had likely been studying these same laws.

A monument on county courthouse grounds, particularly on the grounds of 181 historic county courthouses designated as State Archeological Landmarks, would be a different. We would advise a County Judge or Attorney that a permit from the THC would be required.

This guidance has been shared with more than one County Judge. Governor Abbott's staff got a copy from State Rep. James White and I have not asked the Rep. White where he got that copy but I might guess based on the bills he filed in both 2017 sessions.

Our Architecture Division had an inquiry from Texas Tech which was just preparatory based on UT Austin actions and campus demonstrations. I responded by sending the paper to Vice Chancellor John Opperman and copied to the Chancellor.

And you may know THC was sued by the Sons of Confederate Veterans when our Commission in 2011 declined to approve their application for a state historical marker inside the Supreme Court Building. That marker application was precipitated by the removal and replacement in 2000 of two 1950s-era plaques inside the Supreme Court Building during renovation.

We had multiple letters from Black and Mexican American caucus members asking us to deny the application and the SCV attorney in South Carolina then filed ORRs to get all related emails; I was cited by name! Despite moments of friction, we maintain a cordial, even handed relationship with SCV.

Vaughn

From: Vaughn Aldredge
Sent: Wednesday, October 18, 2017 3:21 PM
To: Ross Giesinger

Subject: THC guidance regarding removal of monuments

Ross

As mentioned, this was developed for use with THC Commissioners in order to help them understand responsibilities in the midst of city, county, and state university protests and actions.

Also, the Governor's office has this document. If it's useful to the TSPB, we would not mind it being shared. Obviously it does not rise to the level of an AG opinion, etc.

We often find ourselves in dialogue with County Judges regarding monuments on the grounds of historic county courthouses and this has been shared with two or three judges.

Vaughn

Conley v. Texas Div. of U. D. of C.

Court of Civil Appeals of Texas, Austin

July 5, 1913, Decided

No Number in Original

Reporter

164 S.W. 24 *; 1913 Tex. App. LEXIS 1449 **

CONLEY, State Superintendent of Buildings and Grounds, v. TEXAS DIVISION OF UNITED DAUGHTERS OF THE CONFEDERACY.

Subsequent History: **[**1]** Rehearing Denied October 8, 1913. Writ of Error Denied by Supreme Court December 17, 1913.

Prior History: Appeal from District Court, Travis County; Chas. A. Wilcox, Judge.

Suit by the Texas Division of the United Daughters of the Confederacy against A. B. Conley, State Superintendent of Buildings and Grounds. From a decree for plaintiff, defendant appeals.

Disposition: Affirmed.

Core Terms

Daughters, capitol, joint resolution, purposes, relics, appellees, public building, designated, injunction, grounds, concurrent resolution, set apart, mementoes, deposit

Case Summary

Procedural Posture

Defendant Texas Superintendent of Buildings and Grounds sought review of a judgment of the District Court of Travis County (Texas), which granted plaintiff civic association's request for an injunction to restrain the Superintendent from interfering with its use of a room in the state capitol building in which it had established a museum of the Confederacy pursuant to H.R. Con. Res. 18, 28th Reg. Sess. (Tex. 1903).

Overview

By virtue of H.R. Con. Res. 18, 28th Reg. Sess. (Tex. 1903), the association was granted the right to the use a room in the state capitol building to establish a museum of the Confederacy. The room was furnished by the association and was accessible to the public. It contained swords, battle flags, documents, and many other relics. The association later obtained a charter so that it could erect a home for old ladies of the Confederacy; however, the purpose of the association remained the same. The Superintendent informed the association that he was going to take possession of the room for use by a governmental entity. A temporary injunction was issued to restrain him from acting. On appeal, the court affirmed and held that the injunction was proper because the legislature had the right by resolution to designate and set apart the room for the association's use. The court held that under Tex. Const. art. XVI, § 39 the association's museum was protected because the legislature had the power to make appropriations, including the appropriation of a specific site, for preserving memorials of the history of Texas, by means of monuments, statutes, and documents of historical value.

Outcome

The court affirmed the judgment of the district court in granting the injunction restraining the Superintendent from interfering with the civic association's use of the room in the capitol.

LexisNexis® Headnotes

Governments > Legislation > Enactment

Governments > State & Territorial

Governments > Legislatures

HN1 [📄] **Legislation, Enactment**

The Texas Constitution clearly recognizes the right of the Texas Legislature to express its will by resolutions, and in the passage thereof the same rules, provisions, and limitations shall apply thereto, except as to the caption and enacting clause. Tex. Const. art. IV, § 15; Tex. Const. art. III, § 38; Tex. Const. art. III, § 34.

Governments > State & Territorial
Governments > Employees & Officials

Governments > Legislation > Interpretation

Governments > State & Territorial
Governments > General Overview

Governments > State & Territorial
Governments > Legislatures

Governments > State & Territorial
Governments > Property

HN2 [📄] **State & Territorial Governments, Employees & Officials**

Tex. Rev. Stat. art. 6383 (1911) gives the Texas Superintendent of Public Buildings and Grounds the authority to take charge and control of all public buildings, grounds, and property of the state which may not be used by the different officers of the state government. Still this must be construed in subordination to the right of the Texas Legislature to designate and set apart rooms in the capitol building for such purpose as it may see proper, and such designation cannot be set aside by any other authority.

Governments > State & Territorial
Governments > Property

HN3 [📄] **State & Territorial Governments, Property**

Tex. Rev. Stat. art. 6389 (1911) provides that no room, apartment, or office in the capitol building shall at any time be used by any person as a bedroom, or for any private purpose whatever.

Governments > State & Territorial
Governments > Legislatures

Governments > State & Territorial
Governments > Property

HN4 [📄] **State & Territorial Governments, Legislatures**

Tex. Const. art. XVI, § 39 provides that the legislature may, from time to time, make appropriations for preserving and perpetuating memorials of the history of Texas, by means of monuments, statutes, paintings, and documents of historical value. And by Tex. Const. art. XVI, § 45 it is provided that it shall be the duty of the legislature to provide for the collecting, arranging and safely keeping such records, rolls, correspondence, and other documents, civil and military, relating to the history of Texas, as may be now in possession of parties willing to confide them to the care and preservation of the state.

Headnotes/Syllabus**Headnotes**

States -- Resolution of Legislature.

In view of Const. art. 4, § 15, and article 3, §§ 34, 38, recognizing the right of the Legislature to express its will by resolution the Legislature could, by resolution, set apart a particular room in the state capitol for use of the Daughters of the Confederacy.

Statutes -- "Resolution" -- "Law."

The chief distinction between a resolution and a law is that a resolution is used whenever the Legislature wishes to merely express an opinion which is to have only a temporary effect, while a law is intended to permanently direct and control matters applying to persons or things in general.

States -- Right to Sue -- Action against State Official.

The state superintendent of public buildings and grounds could be restrained by injunction from interfering with the exercise of a right granted by a resolution of the Legislature; the action not being one against the state.

Statutes -- Legislative Resolutions -- Persons Affected.

Conley v. Texas Div. of U. D. of C.

The fact that after the Twenty-Eighth Legislature passed House Concurrent Resolution No. 18 (Acts 28th Leg. p. 250), permitting the Daughters of the Confederacy to occupy a certain room in the state capitol, that association incorporated for the purpose of being better able to provide a home for destitute and dependent old ladies of the Confederacy would not deprive them of the benefits and privileges of the resolution.

States -- Public Buildings -- Use -- Superintendent of Public Buildings.

Notwithstanding that Rev. St. 1911, art. 6383, gives the superintendent of public buildings and grounds authority to take charge of all public buildings not used by the state officers, the question of whether the state has a present need for a room which the Daughters of the Confederacy were permitted to use until the state needed such room by House Concurrent Resolution No. 4, approved Feb. 25, 1889 (Acts 21st Leg. p. 173), is for the Legislature to determine, and not the superintendent of buildings and grounds.

States -- Use of Public Buildings -- "Private Purpose."

In view of Const. art. 16, § 39, permitting the Legislature to make appropriations to perpetuate memorials of Texas history, and section 45, requiring it to preserve documents, etc., relating to Texas history, House Concurrent Resolution No. 18, passed by the Twenty-Eighth Legislature (Acts 28th Leg. p. 250), permitting the Daughters of the Confederacy to use a room in the state capitol for depositing the relics of the Confederacy, etc., was for a quasi public purpose, and not for a "private purpose," within Rev. St. 1911, art. 6389, providing that no room or office in said building shall be used for private purposes.

Counsel: B. F. Looney, Atty. Gen., and C. M. Cureton, Asst. Atty. Gen., for appellant.

Gregory, Batts & Brooks, of Austin, for appellee.

Judges: RICE, J.

Opinion by: RICE

Opinion

[*24] RICE, J. This suit was brought by appellees against appellant for an injunction to restrain him, and all other persons acting for or under his direction, from removing any of the relics or property in their charge

from the northwest room of the first floor of the state capitol building, or from otherwise interfering with them in the use and possession of said room, alleging that appellant had informed them that he intended to take from them the use and possession thereof, and remove said relics therefrom. A temporary restraining order was issued by the court in accordance with the prayer of said petition, from which this appeal is prosecuted. Appellant [*2] alleges the invalidity of said restraining order, upon the ground that appellees had no lawful right to the possession and use of said room, insisting that it was needed for the State Fire Insurance Commission, recently provided for by the acts of the Thirty-Third [*25] Legislature, and that there was no other adequate room in said building at his disposal for its accommodation.

Appellees insist that under and by virtue of House Concurrent Resolution No. 18, passed at the regular session of the Twenty-Eighth Legislature (see Acts of 1903, p. 250), they had the lawful right to the use and occupancy of said room as a museum for the deposit of relics and historical mementoes of the Confederacy, which said resolution is as follows:

"Daughters of the Confederacy--Setting Aside a Room for.

"House Concurrent Resolution.

"To set aside the northwest room of the first floor of the Capitol for the use of the Daughters of the Confederacy for the deposit of relics and historic mementoes of the Confederacy.

"Whereas, the 21st Legislature of this state by House Concurrent Resolution No. 4, approved February 25th, 1889, Session Acts, page 173, extended the thanks of the people of [*3] the state of Texas to Messrs. W. H. Westfall, S. W. Lacey and N. L. Norton for the 'princely donation of the beautiful granite of which this magnificent capitol is built';

"And whereas, it was therein resolved that 'a room in this capitol building * * * be set apart for the reception' of deposits to be made by said Westfall, Lacey and Norton of specimens of granite, marble and lithographic stone of different grades'; and

"Whereas, it was also therein resolved that 'in recognition of our appreciation of the donation thus made by W. H. Westfall, S. W. Lacey and N. L. Norton, they are hereby especially invited to visit and occupy said room when they visit the capitol during life or until

Conley v. Texas Div. of U. D. of C.

the state shall need the room for other purposes'; and

"Whereas, said room has never yet been designated; and

"Whereas, the Daughters of the Confederacy are desirous of having a room in the capitol designated in which to place the relics of the Confederate and other wars in which the state took part; and

"Whereas, it is the wish of the said Col. N. L. Norton and his said associates that said room be designated, and that the Daughters of the Confederacy be permitted to place said relics in said room, **[**4]** and to care for, protect and exhibit the same: Now therefore,

"Be it resolved by the House of Representatives, the Senate concurring:

"Section 1. That the northwest room on the first floor of the capitol building formerly occupied by the purchasing agent of the state, be and the same is hereby set aside for the uses and purposes aforesaid, and that in addition to the deposits made and to be made under said original concurrent resolution, that the Daughters of the Confederacy of the State of Texas be and they are hereby authorized to take charge of said room and use the same conjointly with the said Westfall, Lacey and Norton, for all of the purposes aforesaid."

It is contended, however, on the part of appellant that this claim is not well founded for the reasons: First, that the Legislature had no authority, by means of such resolution, to grant said privilege to appellees; second, because in undertaking to place said State Fire Insurance Commission in said room, he was acting within his discretion as superintendent of public buildings and grounds, and therefore, not subject to the writ of injunction herein issued; third, because appellee in this case is a corporation, and is not **[**5]** the same body, association, or legal entity upon which the Legislature attempted to confer any right by virtue of said resolution; and, fourth, because the resolution under which appellees claim must be construed in connection with House Concurrent Resolution No. 4, therein referred to, and, when so construed, it is left to the superintendent of public buildings and grounds and the Governor to determine when the room in controversy shall be needed for other purposes; and, they having reached this conclusion, and there being no abuse of discretion on his part, said injunction should not have been issued.

Before undertaking to discuss the points raised and

presented by this appeal, it may be well to state that, long prior to the passage of said resolution, the Daughters of the Confederacy, composed of the wives, widows, and daughters of Confederate soldiers, was a voluntary association for the purpose of perpetuating history and doing benevolent and monumental work, and on the passage of the resolution in question they immediately took charge of said room so set aside to them, furnishing the same, and depositing therein many relics and mementoes of the war of the Confederacy, consisting **[**6]** of guns, swords, battle flags, historical documents, uniforms, and other articles in use by Confederate generals and soldiers, valuable pictures and books including the Ordinances of Secession, and many other interesting relics relating to said war. This room, though usually closed, except during their meetings, was always accessible to the public who might desire to visit it, by application to the watchman in charge of the building. In order to erect a home for the benefit of the old ladies of the Confederacy, and take title thereto and convey the same to the state, it was deemed advisable, in 1905, for such association to obtain a charter, which was done, but this in no manner changed the purpose or object of the association, nor the character and holding of this room, nor has there been any change in the management of the Daughters of the Confederacy, nor in the persons comprising said order. Though it is claimed on the part of appellant that there was no other adequate **[*26]** room equally as suitable as this within said building in which the State Fire Insurance Commission could be located, yet it was admitted by appellant that other rooms might be selected by him which could **[**7]** be used for this purpose. It is shown in this connection that appellant offered other apartments in said building for the use of appellees, but stated at the time of so doing that he could not assure them that they could hold same, because if he had use for the same, he would dispossess them at any time. It also appears from the evidence that the room in question had been furnished at considerable expense to appellees, and its formation was such that the carpeting would be practically useless if removed.

Addressing ourselves to the first contention raised by appellant, we are of the opinion that the Legislature by resolution had the right to designate and set apart said room for the use of the Daughters of the Confederacy. While there is a marked distinction between a law and a resolution, yet **HN1**^(↑) our Constitution clearly recognizes the right of the Legislature to express its will by resolutions, and in the passage thereof the same rules, provisions, and limitations shall apply thereto,

Conley v. Texas Div. of U. D. of C.

except as to the caption and enacting clause. See article 4, § 15, p. 343, Harris' Constitution of Texas; also article 3, § 38, p. 279, and article 3, § 34, p. 249, *Id.*; *State v. Delesdenier*, 7 Tex. [**8] 76; *Navigation Co. v. Galveston County*, 45 Tex. 272; *Franklin v. Kesler*, 25 Tex. 138.

The chief distinction between a resolution and a law seems to be that the former is used whenever the legislative body passing it wishes to merely express an opinion as to some given matter or thing, and is only to have a temporary effect on such particular thing; while by the latter it is intended to permanently direct and control matters applying to persons or things in general. See 34 Cyc. p. 1667; 25 Cyc. p. 163. In support of this construction of the right of the Legislature to act in the present instance by a resolution, instead of by bill, numerous illustrations, occurring both before and after the adoption of the present Constitution, embracing various subjects, might be cited, among others a joint resolution authorizing clerks of the Legislature to occupy the state library for the performance of their duties (G. L. 1871, p. 148); joint resolution making appropriation for refurnishing and repairing the mansion (G. L. 1874, p. 237); joint resolution setting apart certain rooms in the state capitol for the use of the Senate and House of Representatives - (G. L. 1874, p. 237); joint resolution [**9] providing for lighting the capitol and mansion with gas (G. L. 1875, p. 189); joint resolution providing for calling a convention for framing the present Constitution of Texas (G. L. 1875, p. 201); joint resolution providing for survey and sale of property belonging to the state about public buildings and grounds (G. L. 1876, p. 314); joint resolution allowing room in the capitol for Western Union Telegraph Office (G. L. 1881, p. 125); joint resolution reaffirming relinquishment to Galveston of Pelican Flat and Island (G. L. 1879, p. 190); joint resolution acknowledging donation by Westfall and others, and setting apart room in the capitol (G. L. 1889, p. 73); joint resolution providing hearing room in the capitol building for the Railroad Commission (Acts of 1903, p. 251).

We do not think there is any merit in appellant's second proposition, to the effect that no writ of injunction could be issued against him for the reason that he was acting as superintendent of public buildings and grounds. This is not a suit against the state, but only against one of its public officers, seeking to enjoin him from doing an act which would interfere with plaintiffs' right of possession and occupancy [**10] of said room; and, if his act is unlawful in this respect, he could be restrained by injunction. See *Conley v. Daughters of the Republic*

(*Sup.*) 156 S.W. 197; 36 Cyc. 917.

Nor do we believe that the mere act of incorporation for the purposes indicated under the facts of this case should be held to deprive the appellees of the right to use the room for the purposes indicated in said resolution. There was no change in the personnel or management, nor in the purposes and objects of the association, and it would be highly technical to hold that since they incorporated merely for the purpose of providing a home for destitute and dependent old ladies of the Confederacy, they should be deprived of the privileges and benefits thus accorded them.

Even if it be conceded that said resolution should be construed in connection with Joint Resolution No. 4, still, we do not think it follows that appellant's contention should be sustained. The limitation of the use as made in the last resolution, to wit, until the state should need the room, does not indicate who shall determine this question. The Legislature, as the representative of the people, having the right to grant the use of the room to the [**11] Daughters of the Confederacy for the purposes named, must, we think, be held (in view of the fact that it did not say who should pass upon the question of the state's needing the room) to have reserved this right to itself. At least, not having vested this discretion in any other person, we are not prepared to hold with appellant that he had the right to determine the need of the state in this respect. Notwithstanding the fact that article 6383, R. S. 1911, HN2 [↑] gives the superintendent of public buildings and grounds the authority to take charge and control of all public buildings, grounds, and property of the state which may not be used by the different officers of the state government, still this must be construed, we think, in subordination to the right of the Legislature to designate and set apart rooms in said building [**27] for such purpose as it may see proper, and such designation cannot be set aside by any other authority.

It is true, as asserted by appellant, that article 6389, R. S. 1911, HN3 [↑] provides that no room, apartment, or office in said building shall at any time be used by any person as a bedroom, or for any private purpose whatever, but we think that the purposes [**12] for which the room in question was set apart cannot be regarded, in the purview of this statute, as having been set apart for private purposes; but, on the contrary, the purpose was a quasi public one, as a museum for the display of specimens of granite and lithographic stone, and to preserve the relics and mementoes of the Civil and other wars in which the state took part. Especially

Conley v. Texas Div. of U. D. of C.

are we impressed with this view, since the Constitution has provided in section 39, art. 16, HN4 that the Legislature may, from time to time, make appropriations for preserving and perpetuating memorials of the history of Texas, by means of monuments, statutes, paintings, and documents of historical value. And by section 45, art. 16, provided that: "It shall be the duty of the Legislature to provide for the collecting, arranging and safely keeping such records, rolls, correspondence and other documents, civil and military, relating to the history of Texas, as may be now in possession of parties willing to confide them to the care and preservation of the state"--thus indicating that the makers of said instrument deemed it important that the Legislature should have power to make appropriate provision for the **13** collection and preservation of such relics and mementoes, as the evidence shows has been done in the present instance by the Daughters of the Confederacy.

Believing that the court below did not err in granting the injunction, its judgment is affirmed.

Affirmed.

End of Document :

Supreme Court Plaques Timeline

1954 Voters amend the Texas Constitution to allow funds in a pension benefitting Confederate veterans and their widows to be transferred to the State building fund. The amendment provides that the first major structure built shall be known and designated as a memorial to the Texans who served in the Armed Forces of the Confederate States of America, and shall be devoted to the use and occupancy of the Supreme Court.

1955 The 54th Legislature passed HB 214 for the site selection and construction of the Supreme Court building. Section 2 (b) of the bill directed that "...the building provided for in Section 2 (a) herein shall be known and properly designated by the State Building Commission as a memorial to the Texans who served in the Armed Forces of the Confederate States of America, and a suitable corner stone or plaque, or other proper means of designation, shall be integrated into the construction of the building to effectuate this memorial purpose."

Two plaques were installed in the lobby of the Supreme Court. One plaque had a Battle flag with a quote from Robert E. Lee honoring Texas troops he commanded and the other plaque depicted the Great Seal of the Confederacy.

1978 Voters amend the constitution to repeal provisions concerning the State Building commission including the provision for the Supreme Court Building.

1979 Legislature repealed the enabling statute concerning the Supreme Court Building.

2000-2010 The Texas National Association for the Advancement of Colored People (NAACP) advocated for the removal of the two Supreme Courtroom building plaques. Governor Bush states the plaques should remain but with new language acknowledging the construction source of the Confederate pension fund. Those who wanted to keep the old plaques argued that the construction financing required the building to be "designated as a memorial" to Texans who fought for the South in the Civil War with the plaques as commemoration. The original plaques were removed and replacements installed via "routine maintenance order."

The new plaques noted how the building construction was funded and praised equal justice for all citizens regardless of race, creed or color. Governor Bush spokesman Michael Jones: "These replacement plaques will help assure all Texans that our courts provide fair and impartial justice while explaining the role Confederate family contributions played in constructing the building."

Sons of Confederate Veterans and the Southern Legal Resource Center filed a lawsuit seeking a temporary restraining order to prevent the removal of the plaques. A state district judge denied the request, granting a summary judgment for the NAACP. On appeal to the 3rd District Court of Appeals, Sons argue the plaques were wrongfully removed from the Texas Supreme Court Building. The Court concludes the plaques removal did not violate the constitutional provision, as the building was originally dedicated to Confederate veterans and still is. Only the language on the plaque memorializing the dedication changed and the change was consistent with the spirit of the requirements. The court also concluded the antiquities Code prohibition of "damage or destruction to specific types of property" was not violated. The Court does find that the Gov. Code required approval of the new plaques by the Historical Commission, and remanded on this issue only.

September 7, 2017

TO: John Nau
Chairman, Texas Historical Commission

FROM: Mark Wolfe
Executive Director, Texas Historical Commission

RE: Policy and Process Recommendations for Evaluating Requests for Removal and Relocation of Monuments or Markers

As you are well aware, the mission of the Texas Historical Commission (referred to in this document as “the Commission”) is to preserve our state’s historically significant places, including those shaped by the Civil War.

The impact of the Civil War on Texas history was profound, as are the emotions it continues to evoke across our state today. As a slave-holding state and member of the Confederacy, Texas was at the center of many of the war’s most pivotal events. Nearly 100,000 Texans served in the military during the war, and more than twice that number of Texans were enslaved.

Thousands of Texans lost their lives in battle, some on the side of the Union, but most on the side of the Confederacy. In response to this service, previous generations of Texans made the decision to place public monuments and memorials to honor their dead and to commemorate this epochal event.

Today, we see many communities pondering the role of these objects, both in the way they convey their history and in the way they choose to portray themselves to their residents and visitors. Many are discussing the potential removal and relocation of Confederate monuments and markers — objects that not only communicate that history, but have themselves become part of history.

The Commission’s authority over these decisions depends on the location of the objects and their level of designation.

While each request will be unique, just as the individual monuments and communities are unique, Commissioners and applicants must be able to rely upon a consistent evaluation process and policy. The staff of the Texas Historical Commission — architects, archeologists, historians and administrators — is providing a list of questions to help guide Commissioners’ discussions and deliberations as they evaluate requests for the removal and/or relocation of Confederate monuments or markers.

While the intent of these questions is to help commissioners develop a uniform baseline of “technical” facts for evaluating permit requests, any decision of this nature would be incomplete without also taking into account the “non-technical” aspects of a community’s permit request. The unique motivations and discussions that lead a community to apply for a permit — those factors which cannot be captured by a standard list of criteria — must also be considered.

PROCESS REQUIREMENTS

As a reminder, following is a description of the Texas Historical Commission’s evaluation process for permit requests. Please note that some properties have several levels of designation. In such cases, all requirements must be met for each level of designation unless otherwise advised in writing by the Commission. It is proposed that the final decision in all cases would be made by the full Commission or by its Executive Committee:

Covenants:

Some courthouses and other properties that either are, or were at one time, publicly owned, are protected by covenants held by the Commission. In these cases, the terms of the individual covenant will govern the process for applying for approval to remove or relocate a marker or monument. Such projects require the consent of the Commission.

State Antiquities Landmarks:

Some county courthouses and other public places where these monuments and markers can be found are designated as State Antiquities Landmarks (SALs). If the owner of a SAL wants to remove or relocate a marker or monument, they must first notify the Commission. Within 30 days of such notification, the Commission staff will provide the owner with the necessary application forms. Upon receipt of a completed application, the Commission has 60 days to determine whether or not a permit will be issued. If a permit is denied, the proposed project cannot go forward.

County Courthouse Law:

Many monuments and markers are located on the grounds of county courthouses. Under Government Code 442.008(a), counties wishing to remove or relocate such objects must notify the Commission at least 6 months before such action is taken. This provides the Commission with an opportunity to work with the county in an effort to accommodate the county’s goals without damaging the historical integrity of the courthouse or its surroundings. After the 6 months have passed, if the county and the THC have not come to an agreement, the county may move forward with its proposed project.

Recorded Texas Historic Landmarks:

Many of the Commission’s markers identify properties as Recorded Texas Historic Landmarks (RTHLs). This includes courthouses and parks where monuments and markers can be found. Government Code Section 442.006(f) requires that the owners of RTHLs provide the

Commission with a minimum of 60 days written notice before proceeding with a project that will change the appearance of the landmark property. Upon receiving such notice, the Commission may extend the review period by an additional 30 days. At the end of the 60 (or 90) day period, the property owner may move forward with their project, with or without the Commission's permission, and the project must be completed within 180 days.

Markers and Monuments on State Lands:

Markers and monuments on state land can only be removed with the permission of the state legislature, the State Preservation Board, or the Texas Historical Commission. This includes statues, portraits, plaques, seals, symbols, building names and street names on state land honoring Texas citizens for their military or war-related service. Government Code Section 2166.5011.

State Markers on Non-State Lands:

All state markers installed by the Texas Historical Commission since 1955 are property of the State of Texas and were installed with the consent of the property owners, or are within state-owned right-of-way. Removal of these markers requires Commission approval.

National Register of Historic Places:

Some monuments are listed on the National Register of Historic Places. In these cases, if there is no other designation and the monument is not on federal or state land or on the grounds of a county courthouse, the Commission has no review authority unless federal permits or funding are involved.

Local Landmark Designation:

Removal or relocation of locally-designated landmarks will usually require the permission of a local landmark commission. The Texas Historical Commission has no review authority unless federal permits or funding are involved.

Cemetery Monuments:

Monuments and markers in cemeteries are subject to the processes stated above depending on their level of designation. In addition, the removal or relocation of such monuments is subject to the State Health and Safety Code.

RECOMMENDED GUIDELINES FOR EVALUATING REMOVAL/RELOCATION PERMIT REQUESTS

When evaluating permit requests for the removal or relocation of markers or monuments, Commissioners are encouraged to apply the following analysis. Please note that these guidelines are not in priority order, nor are they weighted in any way. The circumstances of each individual situation will guide the decision-making process:

1. Has the object retained its physical historical integrity? That is, does it still look like it did at least 50 years ago? Is it still at the same location where it was placed at least 50 years

ago? Does it retain the same physical context it had at least 50 years ago? If the answer to these questions is “yes”, then it is more likely that the marker or monument should be retained and remain in place. If the answer to any of these questions is “no”, then it is less likely that the monument should be retained or remain in place.

2. Is the object unique in some way, or the work of an important designer? This should be applied both to the object itself and to any cultural landscape of which it is a part. If the answer to this question is “yes”, then it is more likely that the object should be retained and remain in place. If the answer to this question is “no”, then it is less likely that the object should be retained or remain in place.
3. Is the object an element within a larger design that would be affected by its removal? Is it, for example, one of several sculptures or markers in a series, part of a larger whole? Is it visually connected in some way to adjacent landscape features or buildings, or was the surrounding landscape designed to provide views of the sculpture? If the object was part of a larger design that will be negatively affected by the object’s removal, then it is more likely that the object should be retained and remain in place. If removal of the object will not affect adjacent features, then it is less likely that the object should be retained or remain in place.
4. Assuming that the object celebrates or commemorates a particular group or person, what is the actual connection of that group or person to practices that are reprehensible or shameful? If the group or person was only tangentially or unexceptionally connected with the practice, then it is more likely that the object should be retained and remain in place. If the group or person actively promoted the practice, then it is less likely that the object should be retained or remain in place.
5. To the extent that this can be determined, what was the purpose of the original recognition? If the purpose of the original recognition was because of contributions toward the local, regional, statewide or national community that are not connected to shameful or reprehensible practices, then it is more likely that the object should be retained and remain in place. If the purpose of the original recognition was because of the group or person’s connection with shameful or reprehensible practices, or to intimidate local residents, then it is less likely that the object should be retained or remain in place.
6. Can public objections to the presence/location of the object or the content of language displayed on the object be addressed through mitigative interpretation that provides greater historical context? If so, then it is more likely that the object should be retained and reinterpreted in place. If not, then it is less likely that the object should be retained or remain in place.

7. Has the potential removal/relocation of the object been approved either by the vote of the people of the community or that of their appropriate elected officials? If so, then it is less likely that the object should be retained or remain in place. If not, then it is more likely that the object should be retained or remain in place.
8. Are there public safety concerns related to the object's current location? If not, then it is more likely that the object should be retained and remain in place. If there are public safety concerns that would be alleviated by removing or relocating the object, then it is more likely that it should be removed or relocated.
9. Is the object proposed to be relocated to an alternate site? If there is no plan for the use of appropriate professionals in the disassembly, removal, transportation, or relocation, then it is more likely that the object should be retained at its current location. If the object is proposed for relocation, and there is such a plan, then it is more likely that the object should be relocated.
10. Is the object more or less likely to be properly maintained if it is relocated? If the object is more likely to be properly maintained at its current location, then the object should be retained in place. If the object is more likely to be properly maintained at a new location, then it is more likely that it should be relocated.
11. What protection (law enforcement presence, covenants, etc.) does the object have now, and how will that be affected by relocation? If the object is protected at its current location, then it is more likely that the object should be retained in place. If the object is more likely to be better protected at a new location, then it is more likely that it should be moved.
12. Will visitation to the object be impacted by its relocation? If heritage tourists seeking out this kind of monument or marker are more likely to see the object at its current location, then it is more likely that it should remain in place. If heritage tourists seeking out this kind of monument or marker can easily find it at its new location, then it is more likely that it should be moved.