



THE ATTORNEY GENERAL
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CRAWFORD C. MARTIN
ATTORNEY GENERAL

June 8, 1972

Honorable James C. Jernigan
President
Texas A&I University
Kingsville, Texas 78763

Opinion No. M- 1158

Re: Whether Texas A&I
University may legally
receive, for a nominal
consideration or through
donation, a tract of
land from the City of
Kingsville without con-
demnation proceedings
or express legislative
authority?

Dear Sir:

You have requested the opinion of this office regarding
the above question.

The first question to be answered is the authority of
Texas A&I University to acquire the property by donation
or purchase. All references are to Sections of the Educa-
tion Code.

1. 55.01(1) defines "institution of higher educa-
tion" as having the meaning assigned it by
61.003(7). By virtue of its enumeration in 61.
003(3) explained by 61.003(4) Texas A&I is
an "institution of higher education" under
61.003(7) and is such for purposes of Chapter
55 of the Code.
2. 55.01(2) defines "board" as the body having
control of an institution of higher education.
3. Chapter 55 deals with financing permanent
improvements. 55.11 provides, "Each board
is authorized to acquire, purchase . . . any
property . . . on behalf of its institution.
. . ." (Emphasis added.)

4. 104.21 confers upon the board at Texas A&I at Kingsville the same powers that are conferred upon the Board of Regents, State Senior Colleges, except as otherwise proved, which under Section 95.31 "may acquire land needed for the proper operation of a senior college. Such acquisition may be by purchase or condemnation."

These above provisions of the Education Code take this transaction out of the language of Section 24, Article V of the current General Appropriation Act.¹ This rider would in effect prevent any state agency receiving appropriations from accepting the donation of real property or expending any of its appropriated moneys for the purchase of real property "without the expressed permission and authorization of the Legislature."

Our opinion is that Texas A&I University through its Board of Regents may acquire the land by purchase, condemnation, or donation. We do not construe the appropriation rider as precluding the acquisition since general statutory authority exists in support thereof.

The above statutes were in existence at the passage of the current General Appropriation Act and the language "each Board is authorized to acquire, . . . any property . . . on behalf of its institution . . ." and the other provisions above quoted constitute existing constitutional authorization for the acquisition of property inquired about in your opinion request. The existence of this pre-existing authorization precludes any question of the applicability of Article V, Section 24 (last paragraph) of the current Appropriation Bill to the question presented, since the latter provision by its expressed language becomes applicable only in the absence of existing statutory authorization for agency acquisition.

¹Acts 62nd Leg., R.S. 1971, as amended by Acts 62nd Leg., 1st C.S. 1971, p. V-45, 3805-3806.

The statutory authority to acquire by "purchase" is not restricted and is construed to include all lawful acquisition of real estate by any means whatever, except by descent, when so used in its larger and technical sense. Cobb v. Webb, 64 S.W. 792 (Tex. Civ. App. 1901, no writ); 73 C.J.S. 207, Property, Section 15b(2); Words and Phrases, Vol. 1A, p. 577, and authorities therein cited.

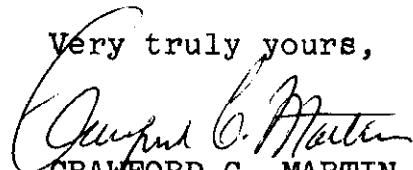
Such a statutory code provision as here involved should be liberally construed with a view to effect its objects and to promote justice. Art. 10(8), V.C.S. Accordingly, we construe the authority given for acquisitions of lands by purchase or condemnation to have been used in the larger, technical sense so as to include donations or gifts.

We express no opinion on the authority of the City to make the conveyance. We suggest, however, that Article 5421q, Vernon's Civil Statutes, be studied and complied with to the extent that it bears upon the questions posed by you.

- S U M M A R Y -

Texas A&I University may legally receive by conveyance and for a nominal consideration a tract of land to be legally abandoned or disposed of by the City of Kingsville without benefit of formal condemnation proceedings or express legislative authority.

Very truly yours,



CRAWFORD C. MARTIN

Attorney General of Texas

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Hon. James C. Jernigan, page 4

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APPROVED: OPINION
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