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ATTORNEY GENERAL OF TEXAS

December 16, 2020

Mr. Mark Wolfe  
Executive Director  
Texas Historical Commission  
Post Office Box 12276  
Austin, Texas 78711-2276

**Opinion No. KP-0344**

Re: Whether Blinn College District may donate, convey, and transfer the Star of the Republic Museum to the Texas Historical Commission in light of section 442.062(b) of the Government Code (RQ-0358-KP)

Dear Mr. Wolfe:

You ask whether Blinn College District (the “District”) may donate, convey, and transfer the Star of the Republic Museum (the “Museum”) to the Texas Historical Commission (the “Commission”) in light of section 442.062(b) of the Government Code.<sup>1</sup> The Museum, located at the Washington-on-the-Brazos Historic Site, where the signing of the Texas Declaration of Independence from Mexico occurred, commemorates the history of the Republic of Texas through its exhibits, collections, and programs concerning pre-1850 Texas.<sup>2</sup> Until recently, the District administered the Museum.<sup>3</sup> However, in 2019, the Legislature transferred jurisdiction of the Museum to the Commission by enacting Senate Bill 2309.<sup>4</sup> Senate Bill 2309 adds section 442.062 of the Government Code, which provides:

(a) The museum and its contents are under the jurisdiction of the commission. The commission is responsible for the preservation, maintenance, and operation of the museum.

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<sup>1</sup>See Letter from Mr. Mark Wolfe, Exec. Dir., Tex. Historical Comm’n, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (June 19, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0358KP.pdf> (“Request Letter”).

<sup>2</sup>D. Ryan Smith, *Star of the Republic Museum*, in HANDBOOK OF TEXAS ONLINE (Tex. State Historical Ass’n, publ’rs, Aug. 21, 2020), <https://www.tshaonline.org/handbook/entries/star-of-the-republic-museum>.

<sup>3</sup>See <http://wheretexasbecametexas.org/about/the-star-of-the-republic-museum/>.

<sup>4</sup>Act of May 22, 2019, 86th Leg., R.S., ch. 693, 2019 Tex. Sess. Law Serv. 1985 (“Senate Bill 2309”).

(b) Notwithstanding Subsection (a), Blinn College District maintains ownership of the museum, the land on which the museum is located, and the artifacts in the museum.

(c) Except as provided by Subsection (b), any power or duty related to the museum formerly vested in any other state agency or entity is vested solely in the commission.

(d) The commission shall, in coordination with an advisory committee appointed by the board of trustees of the Blinn College District, promote the educational and public awareness programs at the museum, the Washington-on-the-Brazos State Historic Site, and the Barrington Living History Farm.

TEX. GOV'T CODE § 442.062. Senate Bill 2309, section 2 provides that “[o]n January 1, 2020, . . . all powers and duties of Blinn College District relating to the Star of the Republic Museum,” specified funds for Museum administration, and all files and records regarding the museum are transferred to the Commission. Senate Bill 2309 § 2(a). “Notwithstanding any other law,” however, the District “shall continue to perform functions and activities related to the Star of the Republic Museum until January 1, 2020, and the former law is continued in effect for that purpose.” *Id.* § 2(b).

You state that the Commission and the District propose to enter into an interagency cooperation contract whereby the District will “donate, convey and transfer” the museum real and personal property to the Commission.<sup>5</sup> Request Letter at 1. You ask whether subsection 442.062(b) precludes the District from transferring ownership of Museum real and personal property to the Commission. *Id.*

Courts construing a statute strive to ascertain and give effect to legislative intent as manifested in the statute’s plain language. *TIC Energy & Chem., Inc. v. Martin*, 498 S.W.3d 68, 74 (Tex. 2016). Courts “consider the statute as a whole, giving effect to each provision so that none is rendered meaningless or mere surplusage.” *Id.* Subsection 442.062(a) of the Government Code transferred the jurisdiction over and management of the Museum and its contents to the Commission, along with responsibility for the Museum’s preservation, maintenance, and operation. TEX. GOV’T CODE § 442.062(a); *see also id.* § 442.062(c) (providing that “any power or duty related to the museum formerly vested in any other state agency or entity is vested solely in the commission”). However, subsection 442.062(b) provides that “[n]otwithstanding Subsection (a), Blinn College District *maintains* ownership of the museum, the land on which the museum is located, and the artifacts in the museum.” *Id.* § 442.062(a) (emphasis added). The statute does not define “maintains.” *See id.* Courts typically give undefined terms in a statute their ordinary meaning. *In re Ford Motor Co.*, 442 S.W.3d 265, 271 (Tex. 2014). In this context, “maintains” ordinarily means “cause or enable (a condition or state of affairs) to continue.” NEW

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<sup>5</sup>The draft agreement attached to your letter recites that the District would transfer to the Commission all real and personal property other than artifacts, and the District would permanently loan the artifacts to the Commission. *See* Request Letter Attachment (on file with the Op. Comm.).

OXFORD AM. DICTIONARY 1055 (3d ed. 2010); *see also* WEBSTER'S THIRD NEW INT'L DICTIONARY 1362 (2002) ("to persevere in : carry on : keep up : CONTINUE"). The nature and extent of the Museum's ownership interest in the real property and each artifact depends on the specific pertinent facts and the terms of prior grants to the District. *See, e.g.*, Act of Apr. 24, 1969, 61st Leg., R.S., ch. 140, 1969 Tex. Gen. Laws 379 (directing the transfer of the "control and custody" of the Museum building and its contents); TEX. PROP. CODE §§ 80.001–.008 (providing procedure to determine ownership of certain cultural artifacts). The opinion process is not amenable to investigating and determining title issues concerning specific property. *See* Tex. Att'y Gen. Op. Nos. GA-1084 (2014) at 2 n.3 ("Determining real estate title is not a function of an attorney general opinion."); GA-0750 (2009) at 2 (stating that this office cannot investigate and resolve mixed questions of fact and law). However, a court would likely determine that subsection 442.062(b) provides for any ownership interest in Museum real property and artifacts that the District possesses to continue in the District despite the transfer of jurisdiction over the Museum to the Commission.

Section 442.062 does not specifically address the authority of the District to donate, convey, or transfer Museum property. *See* TEX. GOV'T CODE § 442.062. Rather, the statute provides for an ongoing relationship between the District and the Commission through which both entities will "promote the educational and public awareness programs at the museum, the Washington-on-the-Brazos State Historic Site, and the Barrington Living History Farm." *Id.* § 442.062(d). Courts "presume the Legislature included each word in the statute for a purpose and that words not included were purposefully omitted." *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015). Because section 442.062 neither specifically authorizes nor prohibits transfer of property by the District, we consider other potential sources of District authority to donate, convey, and transfer the property. *See* TEX. GOV'T CODE § 442.062(b).

You ask whether subsection 272.001(*l*) of the Local Government Code authorizes the District to donate, convey, and transfer the real and personal property to the Commission.<sup>6</sup> Request Letter at 1. That subdivision provides:

A political subdivision may donate or sell for less than fair market value a designated parcel of land or an interest in real property *to another political subdivision* if:

- (1) the land or interest will be used by the political subdivision to which it is donated or sold in carrying out a purpose that benefits the public interest of the donating or selling political subdivision;

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<sup>6</sup>The proposed agreement asserts subsection 272.001(*l*) of the Local Government Code as the basis for the District's donation, conveyance, and transfer the real and personal property to the Commission. *See* Request Letter at 1 and Attachment.

(2) the donation or sale of the land or interest is made under terms that effect and maintain the public purpose for which the donation or sale is made; and

(3) the title and right to possession of the land or interest revert to the donating or selling political subdivision if the acquiring political subdivision ceases to use the land or interest in carrying out the public purpose.

TEX. LOC. GOV'T CODE § 272.001(*l*) (emphasis added). The District is a political subdivision possessing the authority to donate or sell for less than fair market value under the circumstances set forth in the statute. *See* Tex. Att'y Gen. Op. No. GA-0252 (2004) at 7. However, subsection 272.001(*l*) authorizes a conveyance under those circumstances only to another political subdivision. TEX. LOC. GOV'T CODE § 272.001(*l*). The Commission is a state agency, not a political subdivision. *See* TEX. GOV'T CODE § 442.002(a). The Texas Supreme Court has explained the difference between a state agency and a political subdivision:

A political subdivision differs from a department board or agency of the State. A political subdivision has jurisdiction over a portion of the State; a department, board or agency of the State exercises its jurisdiction throughout the State. Members of the governing body of a political subdivision are elected in local elections or are appointed by locally elected officials; those who govern departments, boards or agencies of the State are elected in statewide elections or are appointed by State officials. Political subdivisions have the power to assess and collect taxes; departments, boards and agencies do not have that power. Our examination of a number of statutes shows that the legislature has consistently recognized these distinctions between departments, boards or agencies on the one hand and political subdivisions on the other.

*Guar. Petroleum Corp. v. Armstrong*, 609 S.W.2d 529, 531 (Tex. 1980). Thus, subsection 272.001(*l*) does not authorize the District to donate, transfer, and convey Museum real or personal property to the Commission.

Next, we consider the District's authority under chapter 130 of the Education Code, which governs junior college districts such as Blinn. *See generally* TEX. EDUC. CODE §§ 130.001–.355; *see also id.* § 130.168 (providing junior college service area of the District). Section 130.0021 addresses the authority of a public junior college district to donate, exchange, convey, or lease real property in certain circumstances:

A public junior college or a public junior college district may donate, exchange, convey, sell, or lease land, improvements, or any other interest in any real property for less than the fair market value of the real property interest if the donation, conveyance, exchange, sale, or lease is being made to a *university system* and the governing

board of the public junior college or the public junior college district also finds that the donation, conveyance, exchange, sale, or lease of the interest promotes a public purpose related to higher education within the service area of the public junior college or the public junior college district.

*Id.* § 130.0021 (emphasis added). Section 130.0021 authorizes the District to donate, convey, exchange, sell, or lease real property for less than fair market value only to a university system, not to the Commission.

Finally, we consider the District's general authority to convey property as a junior college district. A junior college district possesses the general authority of an independent school district. *Id.* § 130.084(a). Subsections 11.151(c) and 11.154(a) of the Education Code authorize a board of trustees to sell or dispose of any property other than minerals. *Id.* §§ 11.151(c), .154(a). However, any conveyance must comport with the limitations of article III, subsection 52(a) of the Constitution. *See* TEX. CONST. art. III, § 52(a). Article III, subsection 52(a) prohibits a political subdivision from granting public property as a gratuitous donation. *See Tex. Mun. League Intergov'tl Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 383 (Tex. 2002). A political subdivision's grant of property is not gratuitous if it receives return consideration. *Id.* Moreover, article III, subsection 52(a) does not prohibit a political subdivision's grant of property if it accomplishes a public purpose of the grantor political subdivision. *Id.*; *see also State ex rel. Grimes Cnty. Taxpayers Ass'n v. Tex. Mun. Power Agency*, 565 S.W.2d 258, 265–66 (Tex. Civ. App.—Houston [1st Dist.] 1978, writ dismissed) (holding that article III, subsection 52(a) limits grants from one governmental entity to another). Further, if the District does not receive return benefit, the grant is prohibited by article III, subsection 52(a).

Accordingly, neither subsection 272.001(l) of the Local Government Code nor section 130.0021 of the Education Code authorizes the District to donate, convey, and transfer Museum real and personal property to the Commission. However, subsections 11.151(c) and 11.154(a) of the Education Code authorize the District to convey the Museum real and personal property to the Commission so long as the transfer complies with article III, subsection 52(a) of the Constitution.

S U M M A R Y

Senate Bill 2309 of the Eighty-sixth Legislature transferred the jurisdiction over and management of the Star of the Republic Museum and its contents, as well as all powers and duties of Blinn College District relating to the Museum, to the Texas Historical Commission. Subsection 442.062(b) of the Government Code continues the District's ownership of the real and personal property of the Museum. Neither subsection 272.001(l) of the Local Government Code nor section 130.0021 of the Education Code authorizes the District to donate, convey, and transfer Museum real and personal property to the Commission. However, subsections 11.151(c) and 11.154(a) of the Education Code authorize the District to convey the Museum real and personal property to the Commission so long as the transfer complies with article III, subsection 52(a) of the Constitution.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style with a large initial "K".

KEN PAXTON  
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