



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2021

The Honorable Michele Dodd
Reagan County Attorney
Post Office Box 887
Big Lake, Texas 76932

Opinion No. KP-0390

Re: Transfer of county school land to an independent school district (RQ-0404-KP)

Dear Ms. Dodd:

You ask several questions about transferring county school land to an independent school district.¹

Background

Article VII, section 6 of the Texas Constitution governs land granted to a county for educational purposes—county school land. TEX. CONST. art. VII, § 6. You inform us that Reagan County holds county school land for the benefit of public schools in the County. Request Letter at 1. You explain that Reagan County Independent School District (the “District”) is the only public school district in the County, the County and District boundaries are identical, and thus the District is the sole beneficiary of the county school land. *Id.* at 1–2. You state “[t]he County and the District believe that transferring the County School Land to the District will allow the District to use the Land as it sees best while also giving the District maximum flexibility on how it may use the proceeds from the Land.” *Id.* at 2. In several questions, you ask whether the Constitution and statutes allow a county to sell county school land to the only public school district in the county. *Id.* at 2–5.

Transferring county school land at no cost or for a nominal fee

Previously, this office advised Webb County that it lacked authority to transfer its county school land to the school districts of the county for a nominal fee. Tex. Att’y Gen. Op. No. KP-0011 (2015) at 3. You ask whether Reagan County’s circumstances are distinguishable because

¹See Letter from Honorable Michele Dodd, Reagan Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1–5 (May 3, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0404KP.pdf> (“Request Letter”).

the County has only one public school district as beneficiary. Request Letter at 2. To answer your question, we briefly explain the basis of Opinion KP-0011.

Article VII, section 6 of the Texas Constitution governs a county’s duties with respect to ownership, management, and disposition of county school lands and any land-sale proceeds.² TEX. CONST. art. VII, § 6. Under the provision, the “county alone” holds county school land and any sale proceeds “as a trust for the benefit of public schools” in the county. *Id.* Thus, article VII, section 6 creates an express trust, with the county as the sole trustee, the public schools in the county as the beneficiary, and county school lands and the proceeds of any sale as the trust corpus. *Id.*; see also TEX. EDUC. CODE § 45.113(a)(2), (c) (providing for the county permanent school fund, a trust fund created from land-sale proceeds, the principal of which “must be held in perpetuity for the benefit of the public schools in the county”).

Because the Constitution designates the county alone as trustee, its fiduciary duties are nondelegable. TEX. EDUC. CODE § 45.113(b) (“The trustees may not delegate the authority to manage or invest the trust [.]”). Specifically, this office has consistently advised that a county may not cede its trustee duties to a beneficiary school district. See, e.g., Tex. Att’y Gen. Op. Nos. KP-0011 (2015) at 4, GA-0616 (2008) at 3, JC-0399 (2001) at 5. As trustee, the county holds trust property, whether land or the proceeds of a sale of land, in a fiduciary capacity. See *Ditta v. Conte*, 298 S.W.3d 187, 191 (Tex. 2009) (“High fiduciary standards are imposed upon trustees[.]”). Among its fiduciary duties, a county must “provide for the protection, preservation, and disposition of lands granted to the county for educational purposes.” TEX. LOC. GOV’T CODE § 263.003(a). A county “may dispose of land granted to the county for educational purposes *only* as provided by law.” *Id.* § 263.003(b) (emphasis added).

Article VII, section 6 authorizes disposition of county school land only by sale or lease. See TEX. CONST. art. VII, § 6; *Pulliam v. Runnels Cnty.*, 15 S.W. 277, 279–80 (Tex. 1891). When county school land is sold, the sale proceeds must be placed in the county permanent school fund. The provision assigns a county the ongoing responsibility as trustee to oversee an irrevocable, perpetual trust, whether in the form of county school land or county permanent fund. See TEX. CONST. art. VII, § 6; *Pulliam*, 15 S.W. at 279. (stating the constitutional “purpose was to preserve intact the entire body of the lands, or their entire proceeds if sold, as the permanent school fund of the county”). Thus, a county’s limited power of sale does not authorize transferring the land to

²Article VII, section 6 states in full:

All lands heretofore, or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners Court of the county. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund.

TEX. CONST. art. VII, § 6. By statute, the county available fund may be used only for teachers’ and superintendents’ salaries and related expenses. TEX. EDUC. CODE § 45.105(b).

the district or otherwise terminating the trust. *See* TEX. CONST. art. VII, § 6; *cf.* TEX. PROP. CODE § 112.034(b) (general rule that “a trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person”). The Constitution leaves the manner of sale largely to the discretion of the county commissioners court. *See* TEX. CONST. art. VII, § 6; Tex. Att’y Gen. Op. No. JC-0399 (2001) at 3. But transferring county school land to a school district for no cost or for a nominal fee violates the county’s fiduciary duty to preserve and protect trust property, whether in the form of school land or the permanent county school trust. *See* TEX. LOC. GOV’T CODE § 263.003. Accordingly, a court would likely determine that such a transfer is unauthorized and an abuse of discretion as a matter of law.

Selling county school land for fair market value

You next ask whether the County may sell, and the District may purchase, county school land for fair market value. Request Letter at 3. The Constitution patently authorizes a county to sell county school land at fair market value and place all proceeds in the permanent school fund. *Taber v. Dallas Cnty.*, 106 S.W. 332, 335 (Tex. 1908). The District’s authority to purchase the land presents another matter. You tell us the District does not seek to purchase the property located outside of the district to use directly for educational purposes. Request Letter at 4. Rather, the District seeks to purchase the property for the bonus and royalty income it may produce—in other words, for investment purposes. *Id.* at 1–2.

You do not identify specific authority for the District to invest in real property or the source of funds to be used for that purpose. Section 45.105 of the Education Code limits expenditure of public school funds to those authorized in the section. TEX. EDUC. CODE § 45.105(a). The section specifies authorized purposes for expending certain non-earmarked funds:

for purchasing appliances and supplies, paying insurance premiums, paying janitors and other employees, buying school sites, buying, building, repairing, and renting school buildings, including acquiring school buildings and sites by leasing through annual payments with an ultimate option to purchase, and for other purposes necessary in the conduct of the public schools determined by the board of trustees.

Id. § 45.105(c). The list authorizes buying school sites and buildings but does not address purchasing real property for investment purposes. *Id.* Subsection (c) contains a catchall provision, authorizing expenditures “for other purposes necessary in the conduct of the public schools determined by the board of trustees.” *Id.* But when a list of specific items is followed by a catchall provision, courts generally construe the catchall provision as limited to similar items. *See Ross v. St. Luke’s Episcopal Hosp.*, 462 S.W.3d 496, 504 (Tex. 2015); *see also Thompson v. Elmo Indep. Sch. Dist.*, 269 S.W. 868, 870 (Tex. App.—Waco 1925, no writ) (noting that a school district’s implied necessary powers are those that are essential, not merely convenient, to its declared objects and purposes).

Moreover, the Public Funds Investment Act (the “Act”) specifically addresses the authority of school districts to invest the public funds it has authority to invest. *See* TEX. GOV’T CODE §§ 2256.002(3)(B), (7), (11), .003(a)(1), .0204. Where authorized, funds must be invested under the prudent-person standard, governed by investment objectives “in order of priority: (1)

preservation and safety of principal; (2) liquidity; and (3) yield.” *Id.* § 2256.006(a). The Act lists the types of investments authorized, such as certain government obligations, certificates of deposit, mutual funds, and corporate bonds, but does not include the direct purchase of real property as an authorized investment. *Id.* §§ 2256.009–.016, .0204. The Act’s terms do not provide authority to a school district to purchase real property as an investment. *See Steering Comms. for Cities Served by TXU Elec. v. Pub. Util. Comm’n*, 42 S.W.3d 296, 302 (Tex. App.—Austin 2001, no pet.) (stating that courts “presume that the purposeful inclusion of certain terms in a statute implies the purposeful exclusion of terms that are absent”). Thus, while no judicial opinion has addressed the issue, a court would likely determine that the District is not authorized to purchase county school lands solely for investment purposes.³

Distribution under Constitution article VII, section 6b

You also ask what portion of the proceeds of a sale of county school land must be placed in the permanent county trust fund and what portion may be distributed under a different provision of the Constitution, article VII, section 6b. As previously explained, article VII, section 6 requires all proceeds of the sale of county school lands to be placed in the county permanent school fund. TEX. CONST. art. VII, § 6. Generally, the principal in the county permanent fund must be held in perpetuity and invested to generate income that can be distributed to the school districts in the county. TEX. EDUC. CODE § 45.113(a)3, (c). Article VII, section 6b creates an exception to this general rule, authorizing a county to reduce the county permanent school fund and distribute the amount of the reduction to the beneficiary school districts of the county, but only “for the purpose of reducing bonded indebtedness of those districts or for making permanent improvements.” *Id.* art. VII, § 6b. While section 6b allows a distribution for these limited purposes, the county must “retain a sufficient amount of the corpus of the county permanent school fund to pay ad valorem taxes on school lands or royalty interests owned at the time of the distribution.” *Id.* Subject to the limitations on use of a distribution and the required retention for ad valorem taxes, article VII, section 6b leaves the amount of any distribution to the commissioners court’s discretion.

³We do not address your related question—whether a school district may use mineral lease income for any lawful purpose—premised on the existence of school district authority to purchase county school lands for investment purposes. *See* Request Letter at 5.

S U M M A R Y

Article VII, section 6 of the Texas Constitution does not authorize a county to transfer county school lands to the only school district in the county for no cost or for a nominal fee.

While a county may sell county school lands for fair market value and place the proceeds in a county school permanent trust fund, a court would likely determine that a school district does not possess authority to purchase county school land solely for investment purposes.

Article VII, section 6b of the Texas Constitution authorizes distribution from the county school permanent trust for the limited purposes of reducing bonded indebtedness of those districts or for making permanent improvements, provided an amount sufficient to pay specified ad valorem taxes is retained in the fund. Subject to the limitations on use of a distribution and the required retention for ad valorem taxes, article VII, section 6b leaves the amount of any distribution to the commissioners court's discretion.

Very truly yours,

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

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

MURTAZA F. SUTARWALLA
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

WILLIAM A. HILL
Assistant Attorney General, Opinion Committee