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NOV 26 1996

NOV 18 1996 Opinion Committee

November 8, 1996

The Honorable Dan Morales
 Attorney General
 State of Texas
 300 - 15th Street
 Austin, Texas 78701

RQ-0009

FILE # MC39274
 I.D. # 39274

Dear General Morales:

In the course of fulfilling the responsibilities of the General Land Office to manage the submerged lands dedicated to the Permanent School Fund, questions have arisen about the legal effect of documents purporting to convey an interest in certain State-owned submerged lands to the City of Aransas Pass or to confirm the city's authority over the land.

On May 22, 1944, Texas Land Commissioner Bascom Giles, reciting the authority and requirements of Articles 6930 and 6837 (R.C.S. 1925), signed "Special Award No. 1" which purported to "award, cede, and relinquish" to the City of Aransas Pass "the use and control of" certain described submerged land in Aransas and Redfish Bays for purposes enumerated in Article 6830.

Thereafter, on April 21, 1958, the Nueces County Navigation District, reciting the City's ownership pursuant to Special Award No. 1, relinquished its authority over certain described lands, including those described in the special award, to the City of Aransas Pass. The relinquishment by the navigation district further recited the validation of Special Award No. 1 by Article 969a-1, Vernon Ann. Tex. Civ. Stat. (passed in 1953).

The above statutory provisions are now codified in Chapter 421 of the Local Government Code (or in the case of Art. 969a-1, repealed, as of 1957). Copies of the referenced special award and the navigation district relinquishment are enclosed for your convenience.

The questions presented for your consideration are:

- (1) Does Special Award No. 1 represent a valid act of the land commissioner, legally sufficient to convey title to the City of Aransas Pass or to ratify an interest in the described land obtained pursuant to Article 6837? Could such a conveyance have been effected without compensation to the PSF?

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 Commissioner
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- (2) Can the language of Special Award No. 1, together with the provisions of Article 6837, be construed to grant to the City an exclusive perpetual easement to use and control the described lands for the purposes set out in Article 6830? Can such an easement be granted without compensation to the Permanent School Fund?
- (3) What is the legal effect of the instrument purporting to relinquish authority of the navigation district to the City of Aransas Pass?

The City has for many years believed that it owns the lands described by Special Award No. 1 and has acted in good faith to administer and manage them in that manner.

It is the position of the General Land Office that Special Award No. 1 is legally insufficient to convey ownership of the property to the City and that the described lands were and remain assets of the Permanent School Fund which cannot be sold by a land commissioner absent legislative authority. The only specific statutory authority to convey coastal public lands relates to trades and is set forth in Acts 1983, 68th Legis., Ch. 11, §§ 1-3, as amended by Acts 1991, 72nd Legis., Ch. 633, §8 (found as a "Historical and Statutory Note" following §32.061, TEX. NAT. RES. CODE ANN., Vernon Supp. 1996). It further appears that the purpose for which the City subsequently used these submerged lands is not within the uses contemplated by Article 6830 (which relates to seawalls). Lastly, the Special Award No. 1 not being a conveyance or relinquishment of the "right, title and interest" of the State of Texas in these lands, Article 969a-1 is without effect in this matter.

The navigation district was formed in a manner which includes all of Nueces County within its boundaries; however, it has obtained no patent for any submerged land within the area described by Special Award No. 1. The relinquishment of authority referenced above appears to be a confirmation that the district would not exercise its priority right to oversee the construction and operation of harbors and wharves within the described boundaries.

The issues raised by this request are a matter of public interest and a matter of concern in the performance of my official duties. Your assistance in quickly resolving the issues posed by this request will be appreciated.

Sincerely,


Gary Mauro
Texas Land Commissioner

GM/rfm