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December 15, 1999

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RQ-0163-99
The Honorable John Cornyn
Office of the Attorney General
Opinion Committee
Austin, Texas 78711-2548

Opinion Committee

FILE # ML-41164-99

I.D. # 41164

Dear General Cornyn:

I requested the Comptroller of Public Accounts and the State Auditor's Office to study coastal leasing programs of the Texas Parks and Wildlife Department (TPWD), specifically the department's oyster bed leasing program.

Questions about two areas of law have arisen in the study of these leases, the outcome of which will color the report's recommendations. I would appreciate your opinion on these matters.

Question One: Lease Terms and Conditions.

In a lease between the state and an individual, does the absence of a stated term of the lease grant that leasehold in perpetuity, or does a lessee's payment of annual rent on leased lands render the lease an annual one? If the state, at some point in the future, revokes or renegotiates terms of these leases, will it owe compensation for lost property rights to these leaseholders? If the leasehold is indeed granted in perpetuity, does the leaseholder have an unlimited right to sell or convey the lease? Does the lease expire when the leaseholder dies, or can it be conveyed to heirs?

Facts: Chapter 76 of the Parks and Wildlife Code governs the state's leasing of submerged land to individuals for the private production of oysters. During the course of investigation, the Comptroller's and Auditor's staffs discovered that no length of term exists in any of the active leases. Several of these leases date back to the mid 1950's. The only statute governing terms of lease is Sec. 76.017. Subsection (c) requires annual rental fees, due by March 1. Subsection (d) says only, "The failure to pay any rental when due terminates the lease." In only one instance was evidence uncovered that the \$3 per acre annual rent was not paid in full, yet TPWD allowed the lease to continue.

Owners of these leases, along with TPWD, suggest that these individuals own the leases in perpetuity. However, general property law seems to suggest that annual rental payments provide only year-to-year extensions of the original lease.



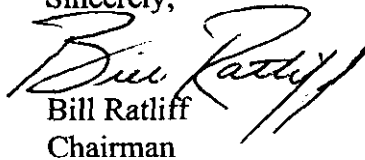
Question Two: Definition of "Control."

When a family member or family business partner acts as an agent for several oyster bed leaseholders, does that violate Parks and Wildlife Code, Sec. 76.007, which states, "No person may own, lease, or control more than 100 acres of land covered by water under certificates of location."? What constitutes "control"? If it is proven that individuals do indeed control more than 100 acres at a time, is that a lease-breaking condition?

Facts: Of the 43 active oyster leases, all in Galveston Bay, it appears only eight individuals either own leases or are listed as agents for the 43 lessees. Several of the lessees and agents also appear to be members of the same family. In the aggregate, one family appears to own or control 1,041.5 acres of leases. Another appears to own almost 450 acres; another, more than 415 acres.

Thank you for your attention to this matter. If you have questions concerning the factual situation described in this letter, please contact Harold Stone at my office, or Kim McDonald of the State Auditor's Office, ph. 479-3042, or Laure McLaughlin of the Comptroller's Office, ph. 936-5807.

Sincerely,


Bill Ratliff
Chairman