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SABINE RIVER AUTHORITY of Texas

P.O. BOX 579
ORANGE, TEXAS
77631

RECEIVED

MAY 05 2005

OPINION COMMITTEE

May 2, 2005

RQ-0342-GA

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-44207-05
I.D. # 044207

RE: Applicability of §272 of the Local Government Code to surplus property dispositions by a river authority created by the authority of Section 59, Article 16 of the Constitution of the State of Texas

Dear General Abbott:

I am writing to request your opinion on surplus property dispositions by a river authority created by the authority of Section 59 of Article 16 of the Constitution of the State of Texas such as the Sabine River Authority. Specifically: May the Sabine River Authority sell surplus land to an adjoining landowner without having to hold a public sale?

The Sabine River Authority owns fee title to various lands which are not used in its day-to-day operations. The Authority's Board of Directors is considering declaring certain portions of such real property to be surplus and disposing of it.

There is some confusion due to the fact the §272.001 of the Local Government Code, if applicable to the dispositions under consideration, appears to require a "public sale" through sealed bid procedures. The real property being considered for disposition is not described in §272.001(b) of the Texas Local Government Code, listing various exceptions to the public sale procedures specified in that statute. On the other hand, §49.226 of the Water Code appears to authorize a river authority like the Sabine River Authority to conduct either public or private sales. In order to consider all of the available options, we would like you to clarify whether the Local Government Code would apply under the circumstances to a river authority created under the authority of Section 59, Article 16 of the Constitution of the State of Texas, such as the Sabine River Authority.

Briefing of some of the legal aspects of this question is enclosed for your information.

Thank you for your assistance in this matter.

Sincerely,

SABINE RIVER AUTHORITY OF TEXAS

A handwritten signature in black ink that reads "Jerry Clark". The signature is written in a cursive style with a large, prominent initial "J".

Jerry Clark
Executive Vice President
And General Manager

JC:ss

Enclosure

May 1, 2005

Mr. Jerry Clark
Sabine River Authority of Texas
P.O. Box 579
Orange, TX 77630

Re: Sale of Abutting or Adjacent Property; GG File No. 55139

Dear Mr. Clark:

The Sabine River Authority of Texas ("SRA") requested an opinion regarding the legality of the sale of surplus land owned by the SRA to an adjoining landowner without holding a public sale. In summary, it is our opinion that this type of transaction is permitted because it falls within specific statutory powers granted to water districts by the Texas Water Code.

TEXAS WATER CODE § 49.226(a) states that any land owned by the district which is found by the board to be surplus and is not needed by the district may be sold under order of the board either by public or private sale. This subsection continues that land must be exchanged for like fair market value, which value may be determined by the district. *Id.* Section 49.001(a)(1) defines district to include any district or authority created by Section 59, Article XVI, of the Texas Constitution. Further, subsection (b) of 49.226 provides that narrowing strips of property resulting from boundary conflicts or from insubstantial encroachments by abutting property owners may be exchanged or transferred to such abutting owners upon terms and conditions deemed necessary or advantageous to the district. This subsection specifically states that Chapter 272 of the LOCAL GOVERNMENT CODE does not apply to this section.

Based on the above, it is our opinion that the SRA may sell real property to abutting individual landowners without conducting a public sale. The SRA is governed by TEXAS WATER CODE § 49.001 et seq., because the SRA was created under Section 59, Article XVI, of the TEXAS CONSTITUTION. Moreover, the SRA may sell real property to abutting landowners at whatever price the board deems fit and the SRA is not subject to a fair market valuation standard. TEXAS WATER CODE § 49.226 does not enumerate how a private sale is to be conducted; however, it is our opinion that a reasonable private sale should incur no legal consequences to the SRA. However, when possible, the SRA should retain a certified appraiser to determine fair market value of the real property prior to its sale.

Mr. Jerry Clark
May 1, 2005
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This opinion is limited to the matters expressly stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated. Our opinions as expressed in this letter are rendered as of the date hereof and are based on existing law which is subject to change. We express no opinion as to circumstances or events which may occur subsequent to the date hereof. We assume no obligation to update or supplement this opinion to reflect any facts or circumstances which may hereafter come to our attention or changes in the law which may hereafter occur.

Sincerely,

GERMER GERTZ, L.L.P.

By: 
Charles W. Goehring, Jr.