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OPINION COMMITTEE

Marco A. Montemayor
WEBB COUNTY ATTORNEY'S OFFICE

FILE # ML-47649-14
I.D. # 47649

RQ-1225-GA



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October 1, 2014

Via Certified Mail, Return Receipt Requested

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

Re: Request for Attorney General Opinion on Texas Education Code § 45.105(c) and the expenditure of school district funds for the management County School Lands as designated by Article VII, Section 6 of the Texas Constitution.

Dear Honorable Attorney General Abbott:

Please accept this as a request pursuant to Texas Government Code § 402.042 for an opinion from your office on the following question:

1. May a public school district expend funds pursuant to Texas Education Code § 45.105(c) for the management of County School Lands so that the public school district may determine if the lessee of the mineral estate is carrying out its duty to explore and develop said mineral estate, and so that the public school district can determine if they are receiving the proper revenues and proceeds for mineral exploration from the lessee?

FACTUAL BACKGROUND

The Webb County School Lands are located in and around the Eagle Ford Shale. As trustee of the Webb County School Lands, Webb County has entered into a mineral lease of said lands. Throughout the term of the mineral estate lease, production and revenue has been minimal; however, surrounding lands in the Eagle Ford Shale are seen unprecedented production. Data does not currently exist for Webb County or its school districts to determine if the lessee is exploring the Webb County School Lands as it should. The Webb County School Districts would like further clarification if they can allocate school district funds for the management of the Webb County School Lands, and in particular, to obtain data through a royalty audit, the

hiring of a private gauger, and a helicopter survey to determine if the lessee is exploring the mineral estate on the Webb County School Land as they should.

LEGAL AUTHORITY

Section 6, Article VII, of the Texas Constitution entrusts county school lands and any proceeds from the sale or lease of said lands to the county for the benefit of the county's public schools. Section 6, Article VII is construed to create an express trust for which the county is trustee. *Delta County v. Blackburn*, 93 S.W. 419 (Tex. 1906); *Comanche County v. Burks*, 166 S.W. 470 (Tex. Civ. App. - Fort Worth 1914, *writ ref'd*). As such, the county has a fiduciary duty as trustee to manage, including protection, preservation and disposition of the trust property for the benefit of the public schools. Tex. Local Gov't Code § 263.003(a); Tex. Att'y Gen. Op. Nos. JC-0004 (1999); H-506 (1975). A county, through its commissioner's court, may sell or dispose of county school lands granted for educational purposes only as provided by law. Tex. Constitution Art. VII, §6; Tex. Local Gov't Code §263.003(b). The county's authority to sell or dispose of county school lands includes authority to enter mineral transaction. *Ethinger v. Clark*, 8 S.W.2d 666 (Tex. 1928). A county may not delegate its constitutional authorities of county school lands. Tex. Att'y Gen. Op. No. JC-0399 (2001). County school land management is an exercise of judgment and discretion by the county as trustee over the land. *Logan v. Stephens County*, 83 S.W. 365, 366 (Tex. 1904).

Texas Education Code § 45.105(a) states that public school funds may not be spent except as provided by this section. "Local school funds from district taxes, tuition fees of students not entitled to a free education, other local sources, and state funds not designated for a specific purpose may be used for the purposes listed for state and county available funds and 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 public schools determined by the board of trustees...**" In *City of Garland v. Garland Indep. Sch. Dist.*, the court held that the school board could determine whether funds could be expended for purposes of street improvement. *City of Garland v. Indep. Sch. Dist.*, 468 S.W.2d 110, 112 (Tex. Civ. App. - Dallas 1971, *writ ref'd n.r.e.*). Moreover, the Texas Attorney General has stated that districts have "wide latitude" when it comes to determining what types of expenses are "necessary" in the conduct of public schools under § 45.105(c). *See Op. Tex. Att'y Gen. No. JC-0165*, at 10 (2000) (concluding that school district employees could receive payment under an "early exit plan" that promoted early retirement). Examples where expenditures were held to be permitted include when they were going to be used for scholarships, crossing guards, school lunches for needy students, and travel or legal expenses of trustees. *See id.* However, in the same opinion, the A.G. noted it was not making a determination as to whether the plan itself, as described, was a permissible expenditure under § 45.105(c), only that the board had broad authority to determine whether an expenditure was "necessary." *See id.* Further, the A.G. states that the "district's decision is subject to judicial review." *Id.*

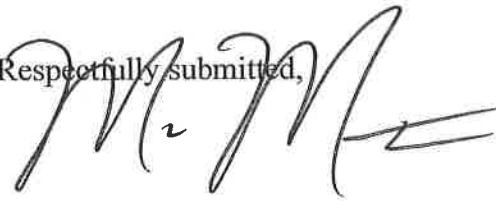
In a prior opinion, the A.G. broke down the meaning of the word "necessary," albeit under the repealed version of the statute (which still had very similar language). *See Op. Tex. Att'y Gen.*

No. JM-1265, at 2 (1990) (holding funds derived from booster clubs or other activities that have become public school property may be used for scholarships if found to be “necessary” by the board). Specifically, the opinion notes the word “necessary” is not akin to “indispensible” in the context of the statute, and instead means “appropriate or conducive to the conduct of a public school.” *Id.* The A.G. also states the expenditure of general funds “must serve a true public purpose, and not merely private ends” in accordance with the Texas Constitution. *Id.*

While it is clear that a county, as trustee of County School Lands, can expend funds to manage said lands, further clarification is necessary to determine if school districts can expend funds to conduct a royalty audit, a helicopter survey, hire a private gauger and other related expenses so that school districts can determine if the proper mineral production is being developed by the lessee of County School Lands.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Montemayor', with a stylized flourish at the end.

Marco A. Montemayor
Webb County Attorney

cc: Webb County School Lands
Committee Members

(Via E-Mail Transmission)

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JAN 15 2015

OPINION COMMITTEE

Marco A. Montemayor
WEBB COUNTY ATTORNEY'S OFFICE



FILE # RQ-1225-GA
I.D. # 47684

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January 13, 2015

Via Certified Mail, Return Receipt Requested

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

Re: ***Supplement to RQ-1225-GA***

Dear Honorable Attorney General Abbott:

Please accept this as a supplemental request to *RQ-1225-GA* pursuant to Texas Government Code § 402.042 for an opinion from your office on the following question:

1. Pursuant to Local Government Code § 272.001(l), may Webb County sell the Webb County School Lands to the school districts of Webb County for a nominal fee of TEN DOLLARS (\$10.00) without complying with the notice and bidding requirements of Local Government Code § 272.001(a) so long as the requirement of Local Government Code § 272.001(l) are met?

LEGAL AUTHORITY

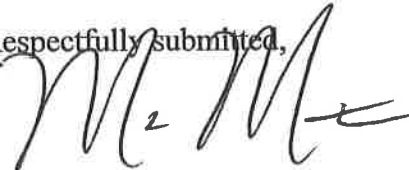
Section 6, Article VII, of the Texas Constitution entrusts county school lands and any proceeds from the sale or lease of said lands to the county for the benefit of the county's public schools. Section 6, Article VII is construed to create an express trust for which the county is trustee. *Delta County v. Blackburn*, 93 S.W. 419 (Tex. 1906); *Comanche County v. Burks*, 166 S.W. 470 (Tex. Civ. App. - Fort Worth 1914, writ *ref'd*). As such, the county has a fiduciary duty as trustee to manage, including protection, preservation and disposition of the trust property for the benefit of the public schools. Tex. Local Gov't Code § 263.003(a); Tex. Att'y Gen. Op. Nos. JC-0004 (1999); H-506 (1975). A county, through its commissioner's court, may sell or dispose of county school lands granted for educational purposes only as provided by law. Tex. Constitution Art. VII, §6; Tex. Local Gov't Code §263.003(b). The county's authority to sell or dispose of

county school lands includes authority to enter mineral transaction. *Ethinger v. Clark*, 8 S.W.2d 666 (Tex. 1928). A county may not delegate its constitutional authorities of county school lands. Tex. Att'y Gen. Op. No. JC-0399 (2001). County school land management is an exercise of judgment and discretion by the county as trustee over the land. *Logan v. Stephens County*, 83 S.W. 365, 366 (Tex. 1904).

Texas Local Government Code § 272.001(a) states the following: "Except for the types of land and interests covered by Subsection (b), (g), (h), (i), (j), or (l), and except as provided by Section 253.008, before land owned by a political subdivision of the state may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county. The notice must include a description of the land, including its location, and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted. The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day after the date of the second publication." Further, Texas Local Government Code § 272.001(l) states the following: "The notice and bidding requirements provided by Subsection (a) do not apply to a donation or sale made under this subsection. 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; (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."

Thank you for your consideration.

Respectfully submitted,



Marco Montemayor
Webb County Attorney

cc: Webb County School Lands
Committee Members

(Via E-Mail Transmission)