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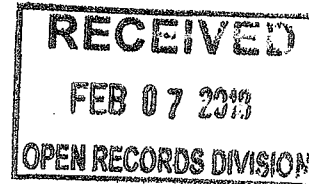
FEB 09 2018

OPINION COMMITTEE

January 29, 2018

The Honorable Ken Paxton
Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

OFFICE OF THE CHANCELLOR



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RQ-0210-KP

FILE # ML-48308-18

I.D. # 48308

Re: *Application of a Fee Simple Determinable Condition to real property deeded from an economic development corporation to an agency of the State of Texas.*

Dear Attorney General Paxton,

I respectfully request, pursuant to Section 402.043 of the Texas Government Code, your opinion as to the following question:

In a real property transaction wherein property is deeded to an agency of the State of Texas by an economic development corporation, does a right of reverter related to a Fee Simple Determinable Condition bind the State, or do the sovereign property rights of an agency of the State of Texas result in Fee Simple ownership of the property?

For your convenience, I have included my brief within this letter.

Factual Background

The Marshall Economic Development Corporation ("MEDCO") deeded a vacant building and property to Texas State Technical College ("TSTC") in 2010. The deed contains a Fee Simple Determinable Condition stating "Grantee, Texas State Technical College, and any successor(s) to Grantee, shall use the property exclusively for the purpose of providing, to the public, career and technical training and education services in Marshall, Texas." The deed thereafter states that the property will revert to MEDCO should that Fee Simple Determinable Condition end. After having used the building for classroom space for the last seven years, TSTC has made the decision that continued ownership of the property is not in the best interest of TSTC. TSTC and MEDCO are requesting clarification on the issue of whether the reverter of the Fee Simple Determinable Condition is enforceable against an agency of the State of Texas.

Legal Authorities

TSTC is an institution of higher education and an agency of the State of Texas, with its enabling statutes found in Chapter 135 of the Texas Education Code. TSTC's Board of Regents have the statutory authority to buy and sell real property and to make such other decisions as the Board determines will benefit the mission of TSTC (Tex.Ed.Code 135.561). Pursuant to that mission, the proceeds of the sale of any real property belonging to TSTC are used exclusively for providing career and educational training, and, if this particular property is sold, TSTC will commit to using the proceeds for educational purposes on TSTC's Marshall campus.

As is the case with any agency of the State of Texas, real property belonging to TSTC is subject to certain supremacy issues, many of which are set out in various Attorney General opinions. There are a number of Attorney General opinions which affirm the general rule that the codes, ordinances, permitting requirements and zoning decisions of a locality or municipality cannot be applied to state property or agencies of the State of Texas. Among these are JM-117 (1983), MW-508 (1982), M-182 (1968), C-690 (1966), C-301 (1964) and V-977 (1949). None of these opinions directly address the issue of a Fee Simple Determinable Condition, and there seems to be no case law directly on point. Further, although an EDC is created to serve a public purpose, such a corporation is not a political subdivision of the State (Local Government Code 501.0559b)).


MEDCO is a Type A economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code. MEDCO previously provided the real property as a "project" as that term is used in Chapters 501 and 504 of the Texas Local Government Code. MEDCO concedes that the State and its political subdivisions are not subject to deed restrictions, but believes that a Fee Simple Determinable Condition is a property right which can be distinguished from a deed restriction. They offer as authority for this position *City of Houston v. Van De Mark*, 83 S.W.3d 864 (Tex. App. - Texarkana 2002) (reverter in deed conveying property to City of Houston to be used as public park was applicable to Texas municipality); *El Dorado Land Company, L.P. v. City of McKinney*, 395 S.W.3d 798 (Tex. 2013) (possibility of reverter is a term of art for a future interest retained by a grantor that conveys a determinable fee and future interest in real property is compensable under the Takings Clause); and *Leeco Gas & Oil Co. v. County of Nueces*, 736 S.W.2d 629, 631-32 (Tex. 1987) (Nueces County was a grantee in a deed which contained a reversionary interest in land which county used as park. County could condemn reversionary interest but had to pay as compensation value of the unrestricted fee which exceeded the value of the restricted fee).

TSTC desires to satisfy MEDCO's concerns while also wanting to protect its sovereignty and property interests. If it is your opinion that the Fee Simple Determinable Condition binds TSTC, then we will either sell the property with the restriction or return the property to MEDCO, at MEDCO's preference.

If it is your opinion that the Fee Simple Determinable Condition does not bind an agency of the State of Texas, then TSTC will sell the property without the Condition, with all proceeds being applied to TSTC's mission of educational purposes.

Should you require further explanation or briefing, please feel free to contact my office at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Reeser", followed by a long horizontal line that ends in an arrowhead pointing to the right.

Michael L. Reeser
Chancellor & CEO
Texas State Technical College