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FILE # ML-48396-18
I.D. # 48396

RQ-0239-KP

July 23, 2018

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

RE: Request for an Attorney General Opinion
Via Email: opinion.committee@oag.texas.gov

Dear Attorney General Paxton:

I am writing to you on behalf of the Texas Southmost College District (TSC) to request an Attorney General Opinion as to whether the Board of Trustees of TSC can:

- (a) Acquire real property from the United States Department of Education, General Services Administration through the Federal Lands to Parks program?
- (b) Designate the land acquired from the General Services Administration to be used as a public recreational center, and other facilities available to the public for recreation?

TSC Chairperson, Adela G. Garza, shared the following information to put the need for this Opinion Request in context. These questions arise out of the following facts and circumstances. In 1991 The University of Texas and Texas Southmost College District entered into a unique educational partnership. On August 14, 1995 TSC acquired 18.76 acres of Federal surplus real property (the Property) identified as the Former USDA Subtropical Agricultural Research Worksite from the United States Secretary of Education pursuant to the Federal Property and Administrative Services Act (the Act). The Property was conveyed to TSC by Quitclaim Deed and was to be used for educational purposes as detailed in TSC's application submitted on April 20, 1995. The University of Texas operated the partnership during its existence, and administered the Property.

In February of 2011, TSC formally began its separation from the UTB/TSC Partnership, and TSC thus began its transition back into a separate, free-standing institution. Around August of 2016, TSC became aware of issues with the Property, which was being used and operated as the Recreation, Education and Kinesiology Center (REK Center). The main issues involved the use, and change of use, of the property pursuant to the terms of the 1995 Quitclaim Deed, and the lack of documentation verifying that use. Unfortunately, TSC has been unable to recover all documentation relevant to these issues.



In May 2017, TSC was informed that Department of Education had placed the Property under internal review, prompting site visits and verification whether the use of the property was in strict compliance with Department of Education requirements. For the last eight months, TSC has been working and cooperating with the Department of Education, exploring available and suitable options for the retention and continued use of the 18.76 acres.

TSC President Dr. Jesus Roberto Rodriguez, has been working with Mr. John Tillery (Federal Real Property Branch Logistics Services Office of Management U.S. Department of Education) in developing options available to TSC with regards to the Property. Mr. Tillery communicated with Jennifer Mollenshott (Branch Chief U.S. General Services Administration Real Property Utilization & Disposal Division) and advised Dr. Rodriguez to contact John Barrett, Program Manager Federal Lands to Parks National Park Service, Southeast Region, directly regarding the possible transfer of the 18.76 acres of the USDA Subtropical property to a program under the National Park Service, the Federal Land to Parks Program.

Dr. Rodriguez has spoken to Mr. Barrett, who was kind enough to provide TSC with information about the program, its potential for the TSC property, and some limited information about a similar program at The University of Alabama, which he believed might help TSC with its present proposal to the DOE and Federal Lands to Parks Program.

TSC was able to receive only limited information from The University of Alabama regarding its program proposal and that information is enclosed with this letter. TSC notes that the program at the University of Alabama appears to be a success, and TSC wishes to pursue a similar avenue with the 18.76 acres.

The Board of Trustees of the TSC is seeking to acquire the 18.76 acres from the federal government through the Federal Lands to Parks program which is administered by the National Park Service. If acquired, TSC will designate this land for recreational use by the public and the TSC community. For example, there is an established baseball field and an established soccer field on the Property. The baseball field could be used by the community for practice because of the limited number of baseball fields available locally. The soccer field is currently used by TSC for selected K-12 extramural tournaments. TSC envisions expanding these particular current uses of the Property for both school purposes and community recreational purposes.

There is a greenhouse on the Property TSC feels could support a public garden, or classes in gardening for TSC students and for the community. Ample parking is available on the Property for use by TSC and the community as well. The Property's relatively new facilities have restrooms that could easily be accessed and used by the public; and the Property itself is currently used for recreational and educational purposes. The Property's use will not limit its use for educational purposes; and at the same time, its use will be expanded for use by the general public.

Significantly, the main building on the property straddles the Property and land owned exclusively by TSC, which presents its own unique issues. The acquisition of the 18.76 acres would allow TSC to continue to promote the educational function of TSC by allowing TSC to continue its use for its students, staff, and faculty as well as expand the Property for use as a park for the benefit of the general public. To that end, the TSC's governing board has approved the submission of this letter to you and, should TSC's plans prove viable after your review, an application to the National Park Service to acquire the 18.76 acres in question pursuant to the Federal Land to Parks Program will be submitted.



TSC asks the Texas Attorney General whether or not the TSC can acquire and hold title to the land from the General Services Administration through the Federal Lands to Parks program and whether or not the TSC can designate that land for public recreational purposes.

TSC believes that if it is successful in acquiring the 18.76 acres of land, TSC as well as the general public will benefit greatly. To that end, I respectfully request your assistance in rendering an opinion regarding the TSC's acquisition and use of the property as described in this letter.

For your review, I have enclosed TSC's Brief and Argument in Support of this Attorney General Opinion Request.

I thank you in advance for your assistance on this matter. If you have any questions, please do not hesitate to contact me at (512) 463-0127.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio, Jr." with a small flourish at the end.

Eddie Lucio, Jr.
State Senator

ELJ/de

Enclosure(s)



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June 22, 2018

VIA Email: opinion.committee@oag.texas.gov

Hon. Ken Paxton
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Brief in Support of Texas Southmost
College District's Request for
Attorney General Opinion
Our file: 43306

Dear Attorney General Paxton:

Please accept this letter as Texas Southmost College District's Brief in Support of Texas Southmost College District's Request for Attorney General Opinion on the following two questions presented in Chairperson Adela G. Garza's letter of May 17, 2018.

The Board of Trustees of The Texas Southmost College District (TSC) asks the following:

- (a) Can TSC acquire real property from the United States Department of Education, General Services Administration through the Federal Lands to Parks program?
- (b) Can TSC designate the land acquired from the General Services Administration to be used as a public recreational center, and other facilities available to the public for recreation?

Exhibits to TSC's Brief

Attached are the following documents relevant to TSC's request:

- Exhibit A: Quitclaim Deed dated August 14, 1995 to the Property (18.76 acres);
- Exhibit B: Photograph of the Property (18.76 acres);

- Exhibit C: Campus Map;
- Exhibit D: Survey of the Main Campus;
- Exhibit E: Federal Lands to Parks Application to Acquire Surplus Federal Property;
- Exhibit F: Federal Land to Parks Brochure;
- Exhibit G: Letter dated January 23, 2009 from University of Alabama President Robert E. Witt to The Honorable Troy King, Attorney General of the State of Alabama;
- Exhibit H: Letter dated February 11, 2009 from the Alabama Attorney General to President Witt; and
- Exhibit I: Information received from University of Alabama.
- Exhibit J: TSC Policy GD (LEGAL)

The Property

TSC acquired 18.76 acres of federal surplus land (the Property) on August 14, 1995 by Quitclaim Deed. **Exhibit A**. The metes and bounds description of the Property is contained in the Quitclaim Deed at pages 2-3. The Property is located on the east side of TSC's main campus. **Exhibits C and D**. Located on the Property is the Recreation, Education and Kinesiology Building (REK Center). See **Exhibit B**, and **Exhibit C**, Buildings, 32. The REK Center straddles the Property and land owned exclusively by TSC. See **Exhibit D**, Tracts 4 and 11. General parking is adjacent to the Property. **Exhibit C**, Buildings, P1.

Texas Southmost College District

Texas Southmost College District is a junior college district governed by chapter 130 of the Texas Education Code. See Tex. Educ. Code Ann., §130.204. That section provides, "TEXAS SOUTHMOST COLLEGE DISTRICT SERVICE AREA. The service area of the Texas Southmost College District includes the territory within: (1) the Brownsville, Los Fresnos Consolidated, and Point Isabel independent school districts; and (2) Cameron and Willacy counties."

The Texas Higher Education Coordinating Board ("Coordinating Board") exercises general control of the public junior colleges of this state. Tex. Educ. Code Ann. §61.060. Authority not vested in the Coordinating Board "is reserved and retained locally in each of the respective public junior college districts or in the governing boards of such junior colleges as provided in the laws applicable." Tex. Educ. Code Ann., §130.002.

Tex. Educ. Code Ann., §130.0021 governs a junior college district's authority to *donate, exchange, convey, sell, or lease land*.

Argument

Under the Federal Land to Parks Program, surplus real property is conveyed to a public entity by quitclaim deed. See Exhibit G, and the Quitclaim Deed attached to that exhibit, both of which were obtained from the University of Alabama's legal department. The quitclaim deed contains deed conditions. Land acquired through the Federal Lands to Parks Program, as a public benefit conveyance, must be used for public park and recreational use in perpetuity. Exhibit F, p. 4.

Although no other provision of Chapter 130 governs the authority of a junior college district to convey land, TSC's proposal to acquire surplus federal land and designate that land to public use should not be considered a conveyance of title to the land under §130.0021, Tex. Educ. Code Ann.; rather, its characterization as a "use" issue is more appropriate. Under the Federal Land to Parks Program the land would be conveyed by Quitclaim Deed, which vests title for all purposes in TSC; and TSC does not anticipate nor propose conveying title or any interest in any portion of the 18.76 acres to any third party. The Federal Land to Parks Program involves deed conditions applicable to the grantee of property, and there is no requirement that the grantee convey an interest to the property to a third party. Monitoring conditions apply, with which the grantee must comply. Exhibit F, p. 5.

The provisions of the Federal Land to Parks Program described in Exhibits E and F require that the land be must be used for public park and recreational use. The Texas Attorney General has noted that at least one court, and a number of Texas Attorney General Opinions, have recognized boards of trustees' implied authority to permit even private groups to lease school property "when the lease does not interfere with the property's school purpose". See Texas Attorney General Opinion No. GA-0252 (September 27, 2004); and *Royse Independent School District v. Reinhardt*, 159 S.W. 1010 (Tex. Civ. App.-Dallas 1913, writ ref'd). A lease actually transfers a possessory interest in land to a third party—a transfer which may appear to conflict with the strict language of §130.0021, Tex. Educ. Code Ann. Yet, the court in *Royse* focused on the property's school use and not the existence of a transfer of a possessory interest in real property. In TSC's case, no transfer of an interest in the 18.76 acres is involved, intended or anticipated.

The use of the Property, however, will remain as it has always been—education. TSC does not anticipate or propose that the 18.76 acres will ever be used for any purpose other than its original school purpose; and, while the dedication of the Property to use as a public park would expand its use by the general public, such use would not interfere with, detract, or limit its use for school and educational purposes. At present, there is no restriction on the public to

enter the TSC campus for peaceful use. TSC also notes that the property has always been used for school purposes and TSC has always maintained that such has been its use despite the loss of some historical records documenting particular programs. TSC's Policy GD (LEGAL), Exhibit J, is consistent with TSC's plan to use the Property or a portion of the Property pursuant to the Federal Land to Parks Program. There is no apparent conflict with any other statute limiting a junior college district's authority to expand the use of TSC property. See Texas Attorney General Opinion No. GA-0252 (September 27, 2004), at pp. 7-9.

Attached to this brief as Exhibits G through I is information received from the University of Alabama, which successfully applied to acquire federal surplus real property under the Federal Land to Parks Program. That University sought an opinion from its State's Attorney General, whose opinion is attached. TSC understands that the laws applicable to the University of Alabama and those applicable to TSC are not identical; but respectfully submits these materials because the issue appears to be the same. That issue is the authority of the Board of Trustees to accept the property and dedicate it to public use. TSC respectfully submits that boards of trustees for Texas junior colleges may accept federal surplus real estate under the Federal Land to Parks Program and adhere to the quitclaim deed's conditions under applicable and governing Texas law.

Conclusion

TSC believes that its acquisition of the Property will allow TSC to continue to enhance the educational experience of its growing student body and increase the public benefit.

If you have any questions, please do not hesitate to contact me.

Yours very truly,



Frank E. Perez

FEP/
Enclosure(s)