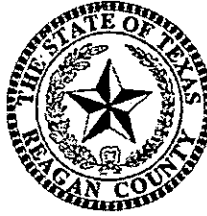


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May 3, 2021

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VIA EMAIL TO: Opinion.committee@oag.texas.gov
VIA CERTIFIED MAIL RRR # 7018 1830 0001 1979 6717

**RE: TRANSFER OF COUNTY SCHOOL LAND TO REAGAN COUNTY
INDEPENDENT SCHOOL DISTRICT**

Dear Committee Members:

Reagan County was granted certain land in Gaines County under Article VII, section 6 of the Texas Constitution for the benefit of the public schools of Reagan County (the "County School Land" or "Land"). The Land is located in Gaines County Texas. Reagan County Independent School District (the "District") is the only public school in Reagan County and the District's boundaries are identical to the County's. I am writing to respectfully request an opinion from your office concerning the possible conveyance of the County School Land from Reagan County (the "County") to the District.

Upon assuming the office of the Reagan County Attorney in January of this year, I was presented with multiple questions concerning the potential conveyance of the County School Land to the District. The County and the District believe that the transfer of the County School Land may be in their mutual best interest and that doing so will allow the District to better serve its students by allowing maximum flexibility on how revenues from the County School Land can be used. Although both parties desire to effectuate such a conveyance, they will do so only if it is in the District's best interest and only to the extent it is permitted within the confines of the law.

As noted in prior Attorney General opinions, Texas has granted land to each county in the state to fund the establishment and benefit of the Texas public schools. See Tex. Const. art. VII, § 6. While the Texas Constitution allows a county to sell its county school lands and invest the proceeds, Reagan County has not. The minerals in the County School Land have been leased from time to time but there is no current mineral lease. However, there is some interest in securing an oil and gas lease. It is expected that such a lease would provide for an initial "bonus" payment and royalty

payments if minerals were eventually produced. As you are aware, the Texas Constitution and the Texas Education Code set specific limitations on how proceeds from the sale of such lands, or revenues derived therefrom, may be spent. *See* Tex. Const. art. VII, § 6b and Tex. Educ. Code § 45.113. Uniquely, the District is the sole beneficiary of this Land, as it is the only school district located within the County.

The County and the District believe that transferring the County School Land to the District will allow the District to use the Land as it sees best while also giving the District maximum flexibility on how it may use the proceeds from the Land. With respect to this potential transaction, the County seeks guidance on the following questions:

1. ***Can the County convey the County School Land at no cost or for a nominal fee to the District since the District is the only public school in the County?***

The Texas Attorney General has previously opined that a county holding lands for the benefit of the county's public school districts could not sell county school lands to its beneficiary school districts for a nominal fee. Tex. Att'y Gen Op. KP-0011 (2015). The Attorney General explained that selling the land for a nominal fee would constitute an impermissible delegation of the Commissioners Court's authority and responsibility and would be contrary to the fiduciary obligation owed to the various beneficiary school districts.

However, the instant question is distinguishable from that presented in KP-0011. Here, the District is the *sole beneficiary* of the County School Land. The money saved by the District in a sale for a nominal amount inures only to the District and not to the detriment of any other public school.¹ Selling the County School Land for a nominal amount greatly benefits the sole beneficiary. Furthermore, the County can and would apply the funds paid by the District to continue the county permanent school fund trust, as contemplated by Article VII, section 6 of the Texas Constitution.

To require the District, the sole beneficiary of the county permanent school land fund, to purchase the County School Land at actual market value would erode the District's fund balance and limit the District's financial flexibility. Allowing the County to convey the County School Land for a nominal amount will preserve the District's fund balance and the County School Land will continue to support and benefit the only public school in the County. Arguably, this is consistent with the County's duty as a trustee.

¹ While a donation of the land to the District would likewise be beneficial to the District, such a transaction is not contemplated by the Texas Constitution, which only contemplates sale of the lands held in trust. Tex. Const. art. VII, § 6.

2. *If the County cannot convey the County School Land to the District for a nominal amount, may it do so for fair market value?*

The Attorney General's previous reticence to endorse the sale of county school lands for a nominal amount is premised on how such a transaction runs contrary to the county's obligation to act as a prudent investor. *See* Tex. Att'y Gen Op. KP-0011 (2015). However, counties are permitted to sell or dispose of the school lands they hold in trust, in whole or in part, in a manner determined by the Commissioners Court. Texas Constitution Article VII, section 6, *see also Fall County v. Delaney*, 11 S.W. 492, 492 (Tex. 1889). As trustees, counties must adhere to the prudent investor rule and must act in the best interest of the beneficiary in any transaction, comporting with all standards outlined in the Texas Property Code. *See* Tex. Property Code § 117.004. If after careful review of a proposed transaction, a trustee believes such a transaction to be in the best interest of the beneficiary, such a transaction to convey land may proceed. *Id.* Therefore, if a county were to sell its county school lands for fair market value, to its beneficiary districts or another, such a transaction likely comports with the prudent investor rule and survives all scrutiny.

The same is true here. If after careful review the County determines that the sale of the County School Land at fair market value is in the best interest of its sole-beneficiary District, such a transaction would be prudent and lawful. That transaction would comport with the prudent investor rule, and the standards articulated in the Texas Property Code. *See* Tex. Property Code § 117.004. To hold to the contrary would likely place too rigid a restriction on the ability of the County to dispose of the land, a right already well-recognized by the courts and provided by the Constitution.

3. *If the County may sell the Land to the District, can the District expend funds to purchase the Land?*

School districts only possess those powers as have been expressly conferred upon them. *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016). The trustees of an independent school district may acquire and hold real property in the name of the district. Tex. Educ. Code § 11.151(a). Schools are generally charged with the ability to maintain the operation of the public schools. Tex. Educ. Code § 45.002(c). Further, the expenditure of public school funds has been expressly conferred as follows:

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 the public schools determined by the board of trustees.*

Tex. Educ. Code § 45.105(c) (emphasis added).

As previously noted, the Land is located in Gaines County, which is northwest of the County and is outside of the District's boundary. The Attorney general has previously read provisions of the Texas Constitution and other statutes in totality with the Education Code as not allowing a school district to expend school funds for the purchase of property outside of a district's boundaries. Tex. Att'y Gen Op. KP-0291 (2020). However, this limitation was premised on the proposed expenditure of school funds for *construction and operation* of schools outside of a district's boundary, not simply the purchase of land. *Id.* (emphasis added). The Attorney General explains that taxes and bond proceeds "are for, among other things, the construction and maintenance of school buildings *'in the district'* and the purchase of sites for those buildings." *Id.* (emphasis added).

Both the County and the District believe the present situation to be distinguishable. In this case, the District is not asking to purchase land outside of the District to construct and operate a school. The District seeks to purchase property outside of the District, exclusively for the benefit of the operation of schools within the District. Unlike the legal limitations relied on in Tex. Att'y Gen Op. KP-0291, the authorizing provisions for school expenditures are silent on the purchase of land outside the bounds of the District for purposes other than construction and operation of a school. However, trustees have the express authority to acquire real property in the name of a district. *See* Tex. Educ. Code §11.151(a). Because the District's proposed purchase of land is unrelated to the future operation and construction of a school, the purchase is not limited and is therefore allowable if the District's Board of Trustees determines it is "necessary in the conduct of the public schools." Tex. Educ. Code § 45.105(c). The issue of whether such an expenditure is lawful turns on the judgment and discretion of the District's Board of Trustees, not any implied authority derived from statute.

4. If a sale of the Land is permitted, what portion of the sale proceeds must be retained by the County as the corpus of the county permanent school fund trust and what portion can be distributed pursuant to Texas Constitution Article 7, section 6b?

The Texas Constitution provides that a county may reduce the county permanent school fund of that county and distribute that amount to county school districts on a per scholastic basis to be used "solely for the purpose of reducing bonded indebtedness of those districts or for making permanent improvements." Tex. Const. art. 7, § 6b. Concerning the sale of county school lands, the Texas Education Code provides that a county may:

1. Sell or otherwise dispose of county school lands in the manner determined by the court;
2. Establish an irrevocable trust for the proceeds of a sale or other disposition under Subdivision (1); and
3. Invest the principal of a trust created under Subdivision (2) in any investment permitted for other county funds under Chapter 2256, Government Code.

Tex. Educ. Code § 45.113(a). The education code further provides that the income of a trust established from a sale of county school lands constitutes a portion of the *county available school fund* and may be distributed as permitted by law. Tex. Educ. Code § 45.113(c) (emphasis added).

Since all the scholastics of the County reside within the District, the sole beneficiary of the county permanent school fund trust, the District is entitled to 100% of any distribution. If the County sells the County School Land to the District for fair market value, is there any limitation on how much of the sale proceeds can be returned to the District to pay off bonds or make capital improvements, and how much of the proceeds must be retained by the County as the corpus for the permanent school fund? Or, is this a determination left to the sound discretion of the County's Commissioners Court?

5. If the District owns the Land, may it lease or sell the minerals and use the proceeds, bonus and royalties, for any lawful purpose?

As discussed above, the proceeds from the sale of county school lands may be used only for limited purposes outlined by the Texas Constitution and the Texas Education Code. See Texas Constitution Article 7, section 6b; Tex. Educ. Code § 45.113(a). Likewise, the school district receiving any funds from the county permanent school fund must use those funds for the purpose of reducing bonded indebtedness of the district or for making permanent improvements, and may only use funds from the county available fund to pay teacher and superintendent salaries. See Tex. Educ. Code § 45.105(a)-(b).

If the District acquires the Land, do the restrictions regarding the use of proceeds derived from the lease or sale of Land, including minerals, continue to inure to the Land or is the District free to utilize it for any lawful purpose, limited only by Tex. Educ. Code § 45.105(c)?

Thank you for your careful consideration of the questions presented in this correspondence.

Sincerely,



Michele Dodd
Reagan County Attorney