



**THE ATTORNEY GENERAL
OF TEXAS**

GROVER SELLERS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable Walter F. Woodul
Member, Board of Regents
Stephen F. Austin State Teachers College
Chronicle Building
Houston 2, Texas

Dear Mr. Woodul:

Opinion No. 0-6911

Re: Power of Board of Regents to
make long term lease of College
land at Nacogdoches for purpose
of acquiring athletic and rec-
reational facilities for Stephen
F. Austin State Teachers College

We are in receipt of your opinion request which
reads as follows:

"At the Stephen F. Austin State Teachers
College is no adequate football plant or athletic
field. What the college has been using is worse
than nothing and does not even come up to the
lowest grade school athletic field. Neither does
the college have a swimming pool or tennis courts.
Due to the fact that the college has none of
these recreational facilities, the attendance is
not what it ought to be and makes it a very high
cost educational institution.

"At the request of the Board of Regents, I
went to Nacogdoches about three weeks ago and
called upon the local citizens for help. The con-
templated improvements will cost about \$150,000.00.
The local citizens feel that the funds should be
raised by taxation; that the city should issue
bonds and build these improvements. The city can-
not do this unless it owns the land or has a long
term lease on the land on which the improvements
are built. The price of local land adjacent to
the college is prohibitive for the city to acquire
it. If the Regents have the power, they are will-
ing to make a long term lease to the city whereby
the city will put up the improvements on this land
and the college have use thereof, at a very small
rental, and further providing that as the school

grows, it would have an option to pay the city for the improvements and cancel the lease.

"I see no way to get these improvements unless it is done this way. Now, the Regents are given control of the management of the school but the question has arisen in my mind as to whether that includes the right of the Regents to make a long term lease, which is really for the benefit of the school more than it is for the city, the Regents having the power to terminate the lease at any time by paying off the cost of the improvements. Of course, the Regents, under contract, would not lose control of the land that they are leasing, as it would at all times during the term of the lease be a facility for the college.

"So that we don't get the city to issue a lot of bonds and then find out that we cannot make this long term lease, would you mind having one of the gentlemen in your office to give us an opinion upon this matter. I hope he will construe the powers liberally and I think the power to control the school property would reasonably carry with it the power to make this advantageous lease to the City, which is in effect merely helping to get this college on its feet."

We will discuss your questions under three subdivisions, viz:

1. Power of the Board of Regents to make long term lease with option to purchase improvements.
2. Authority of the City of Nacogdoches to issue tax bonds for playground purposes.
3. Authority of City to construct improvements on leased land.

(1) Relative to the power of the Board to make a long term lease, we quote from Article 2603c, certain sections and parts of sections, as follows:

"Art. 2603c, Sec. 1

"That the Board of Regents of the University of Texas and its branches, and the Board of Directors of the Agricultural and Mechanical College, and its

branches, and the Board of Directors of Texas Technological College, and the Board of Regents of the State Teachers College and the Board of Regents of the Texas State College for Women, and the Board of Directors of the College of Arts and Industries are hereby severally authorized and empowered to construct or acquire through funds or loans to be obtained from the Government of the United States, or any agency or agencies thereof, created under the National Recovery Act, or otherwise created by the Federal Government or from any other source private or public, without cost to the State of Texas, and accept title, subject to such conditions and limitations as may be prescribed by each of said Boards, dormitories, kitchens and dining halls, hospitals, libraries, student activity buildings, gymnasias, athletic buildings and stadia, and such other buildings as may be needed for the good of the institution and the moral welfare and social conduct of the students of such institutions when the total cost, type of construction, capacity of such buildings, as well as the other plans and specifications have been approved by the respective governing boards; . . .

"Sec. 4. Each of said boards is hereby authorized and empowered to enter into contracts with municipalities or school districts for the joint construction of museums, library buildings, or such other buildings as may be deemed necessary.

"Sec. 6. Upon the acquisition, construction, or erection of such building or buildings, absolute control and management shall vest in the respective board of the institution of the building so constructed or acquired, subject to any condition that may be provided in the grant.

"Sec. 7. It is further provided that land owned by the State or any of said institutions may be used as building sites and ground for such buildings acquired under the provisions of this Act.

"Sec. 9. Provided further that each of said boards may make such contracts as may be necessary to properly carry out the provisions of this Act."

We think that the emergency clause of the Bill originally enacting Article 2603c stated the purpose or object of all legislation on this subject when it provided

"the fact that the institutions of higher learning in Texas are in urgent need of buildings that are for the good of the institutions and the moral welfare and social conduct of the students of such institutions, and the fact that there is not sufficient money in the Treasury of the State of Texas with which to acquire such buildings."

In furtherance of this broad purpose, the Legislature in an amendment to the original act inserted Section 4 as above quoted. We are of the opinion and can see of no other reason for enacting Section 4 except for the purpose of enabling the Board of Regents and municipalities to enter into contracts for the benefit of both agencies. The Legislature probably conferred the authority in broad terms knowing that any such contracts would be based on different facts or circumstances at each State institution. The Legislature enacted Section 4 knowing that in some cases the municipality would furnish the land and the State and Institution would furnish the money for the building, or, as in this case, the State would furnish the land and the municipality would furnish the money for the buildings, and in some cases the municipality may furnish part of the land and part of the money and the institution furnish part of the land and part of the money. In other words, the Legislature conferred broad authority on the Board of Regents to enter into contracts with municipalities to engage in a joint construction enterprise which the board considered necessary and beneficial to said institution.

Article 2647, subsection 1, Vernon's Annotated Civil Statutes grants the Board of Regents of the State Teachers Colleges with "the general control and management of all State Teachers Colleges."

In *Christopher v. City of El Paso*, 98 S. W. (2) 394, 399, the Court had before it the consideration of Article 1269h, which authorizes cities to acquire and construct airports and after such acquisition and construction provides that the city shall have control and management of the same. The City of El Paso under its statutory authority to control and manage airports leased the city airport to an individual. The authority of the city to lease the airport was raised in said case and on page 399 of the opinion the Court stated:

"Upon the question of agency appellants take the position that under Article 1269h (Vernon's Ann. Civ. St.) and Section 71 of the City Charter, the city was bound to retain control and management of the airport and to perform the duties imposed by the statute. While

it is true that both the statute and charter provide that the airport shall be under the management and control of the governing body of the city and that the city shall have the management and control of the property belonging to it, we find nothing in either the statute or the charter which would in any way prohibit the leasing of the property acquired for airport purposes and it is our opinion that the cited provisions can have no bearing upon the question involved." (Under-scoring ours).

This is not a case in which the school is relinquishing control of a part of its campus to private individuals for private purposes or purposes foreign to the school. On the contrary, this portion of the campus is intended to be improved by the city for public purposes for the benefit of students at the College as well as other residents of the City of Nacogdoches. We cannot say that this joint plan of the City and College for improving the campus for the public will amount to an abuse of discretion on the part of the regents or by beyond the scope of their statutory powers of management and control. See *City of Port Arthur v. Young* (Civ. App.) 37 S.W. (2d) 385, writ refused. The test as we see it is whether or not the interests of the public will be subserved.

You are respectfully advised that it is the opinion of this department that the Board of Regents of the State Teachers College is authorized to lease the land in question to the City of Nacogdoches under a long-term lease for the purpose of jointly constructing buildings considered necessary.

(2) Does the City have power to issue tax bonds for playgrounds, etc. ?

We have been informed that the City of Nacogdoches is a "home rule" city, operating under its own charter. We have not been furnished with a copy of the city charter and are not advised as to whether the city has adopted all of the powers conferred by the statutes relative to home rule cities, so we do not propose in this opinion to construe the charter powers of the City of Nacogdoches but only the statutory powers relating to home rule cities. We quote from two paragraphs of Article 1175:

"Sec. 10. The power to control and manage the finances of any such city; to prescribe its fiscal year and fiscal arrangements; the power to issue bonds upon the credit of the City for the purpose of making per-

manent public improvements or for other public purposes in the amount and to the extent provided by such charter and consistent with the Constitution of this State;"

"Sec. 15. To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary to take any private property within or without the city limits for any of the following purposes; city halls, police stations, jails, calaboose, fire stations, libraries, school houses, high school buildings, academies, hospitals, sanitariums, auditoriums, market houses, reformatories, abattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, playgrounds, sewer systems, storm sewers, sewerage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands within and without the city for any other municipal purposes that may be deemed advisable. The power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water work, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares and pleasure grounds, public wharves, and landing places for steamers and other crafts, and for the purpose of straightening or improving the channels of any stream, branch or drain, or the straightening, widening or extension of any street, alley, avenue or boulevard. The power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes."

The Supreme Court of Texas in *Lewis v. City of Fort Worth*, 89 S. W. (2d) 975, in construing the charter of Ft. Worth, the charter having similar wording as the above-quoted statutes, held that the city of Fort Worth had authority to spend money raised by the sale of bonds for the purpose of constructing, equipping and improving pleasure grounds, parks and playgrounds.

If the charter of the City of Nacogdoches authori-

zes the City to issue bonds for constructing, equipping and improving pleasure grounds, parks, and playgrounds, then, based upon the above referred to statutes and decision, it is the opinion of this department that said City would be authorized to issue tax bonds for said purposes.

(3) Does the City of Nacogdoches have the power to construct permanent improvements on leased land?

McQuillan on Municipal Corporations

"Sec. 1215. When necessary to promote its public purposes the municipal corporation usually is empowered to become the lessee of real property for the benefit of its inhabitants. Power to acquire property implies the power to lease, or to enter in contract to purchase. . . ."

43. Corpus Juris. p. 1329: "A municipal corporation may take a lease of real property for the legitimate corporate purpose, provided charter and statutory provisions on the subject are complied with."

In City of Mission v. Richards, 274 S.W. 269, the Court of Civil Appeals held that the City of Mission had authority to lease a building for a city hall and fire station. We have been unable to find any statute or any decision of the courts of this State prohibiting a city from leasing land for municipal purposes. We do not think it necessary in this opinion to hold that a Texas municipality has authority to construct permanent improvements on leased land, since we have a statute conferring authority on the Board of Regents of the State Teachers College and municipalities to enter into contracts for the joint construction of certain permanent improvements, and we are basing our opinion on this question solely on said statute. Construing the above authorities and especially Section 4 of Article 2603c, this Department is of the opinion that the City of Nacogdoches has authority to enter into a long term lease contract with the Board of Regents of the State Teachers College and to construct, equip and improve pleasure grounds, parks, and playgrounds on said leased land.

Hon. Walter F. Woodul, page 8

0-6911

Yours very truly
ATTORNEY GENERAL OF TEXAS

By s/R. J. Long
R. J. Long
Assistant

RJL:BT:wc

APPROVED DEC 12, 1945
s/Carlos C. Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

This Opinion Considered and Approved in Limited Conference