



**THE ATTORNEY GENERAL
OF TEXAS**

**JOHN L. HILL
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

May 28, 1976

**The Honorable Truett Latimer
Executive Director
Texas Historical Commission
P. O. Box 12276, Capitol Station
Austin, Texas 78711**

Opinion No. H- 828

**Re: Whether a city may
contract with a private
organization to restore
and maintain an historic
home.**

Dear Mr. Latimer:

You have asked if article 3, section 52 of the Texas Constitution would preclude a contract between a city and a private organization whereby the private organization would receive federal community development funds from the city and in return, the private organization would purchase, restore and maintain an historic home. See Housing and Community Development Act of 1974, 42 U.S.C. § 5305; Texas Community Development Act of 1975, V.T.C.S., art. 12691-4; V.T.C.S., art. 1269j-4.1. We understand that the home involved is the Scott Home in Fort Worth, which has been designated as a National Landmark by the National Register of Historical Places through the United States Department of Interior.

Your question does not include a specific contract between the city and the private organization and thus, we do not pass on the validity of any specific agreement in light of article 3, section 52. Neither do we determine the applicability of any other constitutional or charter provisions.

Your specific question is whether the city would be precluded by article 3, section 52 of the Texas Constitution from contracting with a private organization to restore, maintain and operate the home. We do not believe the fact that the funds are part of a federal grant to the city is relevant for purposes of the constitutional provision. Article 3, section 52 provides in part:

(a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

A similar question was raised in Attorney General Opinion H-127 (1973), which stated:

The current construction of this provision is that it does not prohibit the Legislature from authorizing a county, city or other political corporation or subdivision to spend its funds with private corporations for the achievement of public purposes. See, for example, State v. City of Austin, 331 S.W.2d 737 (Tex. 1960) and Bullock v. Calvert, 480 S.W.2d 367 (Tex. 1972).

It is not unusual for political subdivisions to contract with private corporations to perform services or functions which the governmental unit might have provided itself. For instance, in Attorney General Opinion C-246 (1964), it was held, after a very thorough discussion of the law, that a commissioners court could contract with a private entity for the care of indigent aged in a private facility. In Attorney General Opinion C-334 (1964), it was held that a hospital district could pay private hospitals for the care of indigent patients.

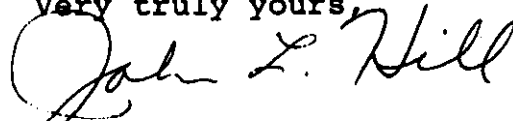
In Attorney General Opinion M-843 (1971), it was held that Potter County could contract with a private non-profit institution for the care and supervision of juvenile delinquents. Other examples might be cited but we deem the foregoing amply sufficient to support our conclusion that a county may contract with a private non-profit corporation for the purpose of creating and maintaining a recreational center designed for aged persons under the same terms and conditions that the county itself could create and maintain such a center.

It is our opinion article 3, section 52 of the Texas Constitution does not preclude a city from contracting with a private organization for restoration, operation and maintenance of an historic home for the benefit of the public. See Attorney General Opinions H-740 (1975), H-520 (1975); H-472 (1974); H-445 (1974); H-416 (1975); and H-403 (1975).

S U M M A R Y

Article 3, section 52 of the Texas Constitution does not preclude a city from contracting with a private organization for restoration, operation and maintenance of an historic home for the benefit of the public.

Very truly yours,

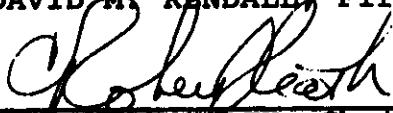


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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