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April 25, 1973

The Honorable Jim Kaster, Chairman
Intergovernmental Affairs Committee
House of Representatives
Austin, Texas

Letter Advisory No. 14

Re: House Bill 25. A Bill
relating to the approval
and filing of subdivision
plats in incorporated cities
and towns and in counties;
the requiring of subdividers
to make certain provisions
for school, park and play-
ground areas, and the auth-
ority of the governing bodies
of cities and towns and
commissioners courts to
establish certain standards.

Dear Representative Kaster:

House Bill 25 provides that the governing body of any political sub-division may require that subdividers of real property dedicate as much as ten per cent of the gross area of the proposed subdivision for school, park or playground purposes as a condition precedent to the approval of any plat which is required to be filed. The governing body "shall promulgate standards to be applied in determining the amount of land that shall be dedicated to each purpose". The standards are to be based on the number and type of dwelling units in the subdivision and the need for school, park or playground sites in existing subdivisions of a similar type. In lieu of requiring dedication of land, the governing body may require payment of a sum of money equal to the value of the land which would be dedicated if it is not in the public interest to accept the land. The decision as to whether money or land is to be taken is to be based upon standards to be promulgated by the governing body. Such funds may only be used for the acquisition of school, park and playground sites for the benefit of the residents of the subdivision for which payment was made.

Your letter asks our opinion as to the constitutionality of this measure. The Constitution of Texas provides in Article 1, § 17 that:

"No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person . . ."

This is considered a limitation upon the sovereign power of eminent domain inherent in the State and requires that, where property is condemned for the use of the public, the owner must be compensated.

However, there are well recognized situations in which private property is appropriated to a public use without compensation. Zoning may have such a result. Our courts hold that political subdivisions may require as a condition precedent to the granting of a building permit that reasonable regulations as to streets, building set back, etc., may be imposed even to the extent that the owner of the property may be required to dedicate his property for a public use.

Although there are no Texas cases involving a statute such as that proposed in House Bill 25, it is a type of legislation which is becoming more and more common. The validity and construction of such statutes are the subject of an annotation appearing at 43 ALR 3d, Subdivided Land - Dedication for Recreation, p. 862 et seq. (1972). The cited cases indicate that the states predominately have upheld such legislation although not unanimously. Constitutionality of the dedication statutes is upheld under the states' police power. The cases also reason that the subdivider realizes a profit from governmental approval of a subdivision and that his land is thus rendered more valuable by the fact of subdivision. In return for this benefit, it is held that the city may require him to dedicate a portion of his land for park purposes whenever the influx of new residents will increase the need for park and recreational facilities.

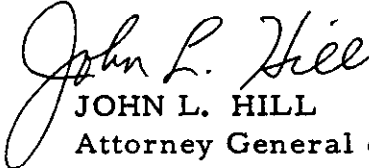
It is our opinion that the Texas courts, if faced with the question of the constitutionality of a statute such as House Bill 25, will follow the majority and will uphold such statutes. It is our opinion, therefore, that House Bill 25 is constitutional.

Our opinion is supported by the following authorities: Article 1, § 17, Constitution of Texas; City of Dallas v. Meserole, 155 S. W. 2d 1019 (Tex. Civ. App., Dallas, 1941, err. ref. want merit); City of Dallas v. Halbert,

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246 S. W. 2d 686, (Tex. Civ. App., Dallas, 1952, err. ref., n. r. e.); Swain v. Board of Adjustment of City of University Park, 433 S. W. 2d 727 (Tex. Civ. App., Dallas, 1968, err. ref., n. r. e.) certiorari den. 396 U. S. 277, 24 L. Ed. 2d 465, 90 S. Ct. 563 (1970); City of University Park v. Benners, 485 S. W. 2d 773, (Tex. 1972); Halsell v. Ferguson, 202 S. W. 317 (Tex. 1918); City of Corpus Christi v. Unitarian Church, 436 S. W. 2d 923 (Tex. Civ. App., Corpus Christi, 1968, err. ref., n. r. e.); 43 ALR 3d 863; Pioneer Trust and Savings Bank v. Village of Mount Prospect, 176 N. E. 2d 799 (Ill. 1961); Billings Properties, Inc. v. Yellowstone County, 394 P. 2d 182 (Montana, 1964); Jordan v. Village of Menomonee Falls, 137 N. W. 2d 442 (Wis. 1965); Jenad v. Village of Scarsdale, 271 NYS 2d 955, 218 N. E. 2d 673 (New York, 1966); Aunt Hack Ridge Estates, Inc. v. Planning Commission of Danbury, 230 A. 2d 45 (Conn. 1967); Frank Ansuini, Inc. v. City of Cranston, 264 A. 2d 910 (R. L. 1970); Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek, 484 P. 2d 606 (Cal. 1971).

Very truly yours,


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APPROVED:


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