



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 94-018

Re: Whether Harris County is authorized to
acquire county park land located outside the
boundaries of Harris County (ID# 23386)

Dear Mr. Driscoll:

You ask if provisions in chapter 320 of the Local Government Code relating to the powers of a county board of park commissioners provide authority for Harris County to acquire certain tracts of land, which are outside the county limits, to be included in a county park otherwise within the county and contiguous with the tracts in question. You say that the Harris County commissioners court has adopted the provisions of chapter 320. See Local Gov't Code § 320.001 (commissioners courts of counties of 5,000 or more population may adopt chapter 320's provisions). Under chapter 320 a commissioners court may create a "board of park commissioners," but if it does not, the commissioners court may exercise the powers of said board under the chapter and references therein are to be considered as references to the commissioners court. *Id.* §§ 320.002 through 320.004. You say no board has been created in Harris County and that the commissioners court exercises the powers of such board.

Section 320.044, the specific provision you ask about, speaks to the authority of a board to enter into contracts, and reads in pertinent part:

(a) The board may enter a contract, including a lease or other agreement, with any person as the board considers necessary or convenient to carry out the purposes and powers granted by this chapter, including a contract connected with, incident to, or affecting the acquisition, financing, construction, equipment, maintenance, or operation of a facility located or to be located in or pertaining to a park under its control.

(b) A contract may be on terms and conditions and for the length of time as agreed to by the board.

Local Gov't Code § 320.044(a), (b). You suggest that "the term 'contract' as used in the above statute, includes deeds which convey title to land with the usual covenants," and that the provisions authorize acquisition of "park land, without regard to whether the land is located inside or outside of the county."

Section 320.044 indeed appears to confer broad powers to enter contracts "to carry out the purposes and powers granted by this chapter." References to acquisition of park land in chapter 320 are found in sections 320.001 and 320.071. Section 320.001, mentioned above, generally authorizes certain counties to "adopt this chapter for the purpose of acquiring, improving, equipping, maintaining, financing, and operating one or more public parks." Section 320.071(a) authorizes a county to issue revenue bonds to "acquire, improve, equip, and repair any park administered by the board or for the acquisition . . . of any facilities to be used in or connected with or incident to such a park."

However, other provisions bearing on county acquisition of park land are found in chapter 331 of the Local Government Code, which chapter applies to all counties and municipalities. Section 331.001 provides in pertinent part:

(a) A municipality or county may improve land for park purposes and may operate and maintain parks. . . .

(b) A municipality or county may by gift, devise, purchase, or eminent domain proceeding acquire:

(1) land and buildings to be used for public parks, playgrounds, or historical museums

(c) Land acquired by a municipality under Subsection (b) may be situated inside or outside the municipality but must be within the county in which the municipality is situated, and land acquired by a county under Subsection (b) must be within the limits of the county. The land may be acquired in any size tract considered suitable by the governing body of the municipality or county.

Id. § 331.001 (emphasis added).

Notably, section 331.001 limits county park land acquisitions under that provision to land "within the limits of the county." You suggest, however, that section 320.044, the provisions of which were quoted previously, is a "special statute," applicable as it is only in those counties of 5,000 or more population which have adopted chapter 320, and that it "appears to control over" section 331.001. Assuming section 320.044 provides such independent authority for the county to "contract" for the acquisition of park land, you argue that it permits acquisition of the out-of-county tracts you are concerned about, there being no requirement under that provision that land acquired be within the county. We disagree.

Given that section 320.044 does not speak to the issue of the location of any land it might authorize acquiring while section 331.001 specifically limits county park land acquisitions to land "within the limits of the county," we do not find a conflict between sections 331.001 and 320.044 with respect to the location of county park land such as to

raise the issue of reading the latter provision as "controlling over the former." Assuming *arguendo* that the term "contract" in section 320.044 includes "deeds," we believe the two provisions should be read together for purposes of the issue you raise. Pursuant to the specific provision of section 331.001 the county is limited in acquiring park land to land "within the limits of the county." See also Parks and Wild. Code § 13.304 (authorizing county acquisition of "land for public recreation," but not specifying where such land may be located).

We caution that we do not mean to say here that any legal authorization for county land acquisition is necessarily limited to land within the county. See, e.g., Attorney General Opinion H-392 (1974). We reach our conclusion here based on the specific provisions involved, and in particular on the express limitation in section 331.001.¹

S U M M A R Y

In acquiring county park land, Harris County is limited by Local Government Code section 331.001 to land within the county.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

¹It may be that other arrangements would be available, for instance a joint agreement with another political entity, for acquiring and combining the subject tracts with the county park land in Harris County. See, e.g., Local Gov't Code §§ 331.008, 331.010; Parks & Wild. Code §§ 13.303, 13.304.