



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 16, 1998

The Honorable Garry Mauro
Commissioner
Texas General Land Office
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701-1495

Letter Opinion No. 98-017

Re: Construction of legislation extending date on
which public land sold to City of Corpus Christi
would revert to the state (ID# 39575)

Dear Commissioner Mauro:

You ask us to determine "the legal effect" of a 1965 amendment to article 5421k-3, V.T.C.S., a 1961 enactment validating the sale of a tract of submerged land to the City of Corpus Christi (the "city").¹ The statute required the city to fill the land by July 1, 1965, and provided that title to any part of the land that was not filled by that date "shall revert to the State of Texas." The 1965 amendment² to article 5421k-3, which extended the city's deadline until July 1, 1971, did not become effective until August 30, 1965.³ We understand you to ask whether the unimproved land⁴ automatically vested in the state on July 1, 1965, without any need for the state to file a lawsuit or take other action. If title to the submerged land vested in the state, the land would return to the Public Free School Fund⁵ and could not be granted to the City of Corpus Christi without payment to the fund.⁶ Thus, if title to the land vested in the state on July 1, 1965, the legislature could not thereafter extend the time which Corpus Christi had to fulfill the conditions for validating its patent without also requiring additional consideration to the Public Free School Fund.

¹Act of May 24, 1961, 57th Leg., R.S., ch. 489, § 1, 1961 Tex. Gen. Laws 1089, 1089.

²Act of March 3, 1965, 59th Leg., R.S., ch. 34, § 1, 1965 Tex. Gen. Laws 91, 92.

³*Id.* at 93.

⁴We do not know whether any of the land had been improved by the July 1, 1965 reverter date. The emergency clause of the amending bill states that the fact "that the development of said land in the 'Cayo Del Oso' is an essential part of the program of the City of Corpus Christi to eliminate existing undesirable conditions which constitute a menace to the health and welfare of its citizens; and the fact that such improvements cannot be made or completed within the time required by existing law, making the granting of additional time imperative," creates an emergency. Act of March 3, 1965, 59th Leg., R.S., ch. 34, § 7, 1965 Tex. Gen. Laws 92, 92.

⁵Tex. Const. art. VII, § 4; Attorney General Opinion MW-18 (1979).

⁶Attorney General Opinion H-881 (1976).

We are unable to answer your question as a matter of law.⁷ The 1961 enactment is ambiguous, and we do not believe we can resolve the multiple legal issues it raises by relying on the rule that legislative grants of property must be construed strictly in favor of the state.⁸ Nor can we so easily dismiss the legislature's consistent efforts to ratify the city's ownership of the land. Despite searching the legislative history of the 1961 enactment, we found no extrinsic evidence of the legislature's intent about the process by which the land would "revert to the State." The contemporaneous administrative construction of the 1965 amendment is highly relevant to your question, but we lack information about it and cannot investigate it in the opinion process. Finally, we cannot be certain that we have identified all legal issues relevant to a matter of this complexity.⁹

For your guidance, we will review the statutes and point out some of the relevant issues. We will first look at the 1961 act, which adopted article 5421k-3, V.T.C.S. It provided in part:

The sale by the State of Texas to the City of Corpus Christi of 986.97 acres of land in Nueces County, known as Tract C, as shown on a map entitled Sheet No. 1, Laguna Madre, . . . dated November 1, 1948, and revised September 12, 1951, by addition of Cayo Del Oso Subdivision, which land is described by metes and bounds in that certain patent¹⁰ heretofore issued to said City, being Patent No. 158, Volume 29-B, dated June 11, 1959, is hereby in all things confirmed and validated so that all right, title and interest of the State of Texas in and to all of the land described in said patent, submerged and unsubmerged, shall be and is hereby relinquished, confirmed and granted unto the City of Corpus Christi, its successors and assigns, and such land shall be vested in the City of Corpus Christi subject only to the conditions, limitations and restrictions contained and imposed by the

⁷See Attorney General Opinion JM-675 (1987) (this office could not determine in the opinion process whether deeds of public lands included particular restrictions or whether there was substantial compliance with any such restrictions); *but see* Attorney General Opinion C-52 (1963) at 23 (stating in dicta with respect to conditional grant of submerged land to City of Corpus Christi that "[e]ven in the event of a condition broken, the remedy of a grantor is by way of trespass to try title action to recover possession and not by ipso facto reverter").

⁸*Schwarz v. State*, 703 S.W.2d 187 (Tex. 1986). The general rule is that the law does not favor forfeitures, and the courts will not declare a forfeiture unless compelled to do so by language that will admit of no other construction. 67 TEX. JUR. 3D *Statutes* § 164 (1981); Attorney General Opinion JM-675 (1987) at 3.

⁹Other parties with an interest in this conveyance, such as the City of Corpus Christi and persons to whom the land has been transferred, might be able to identify additional issues.

¹⁰You have submitted to us a copy of the patent, signed by Governor Price Daniel and by Bill Allcorn, Commissioner of the General Land Office at that time. The patent describes the land as "[b]ought and fully paid for by the City of Corpus Christi under the provisions" of three statutes adopted in 1955, 1957, 1959 and incorporates their provisions by reference. See Act of May 10, 1955, 54th Leg., R.S., ch. 294, 1955 Tex. Gen. Laws 803, 803; Act of May 15, 1957, 55th Leg., R.S., ch. 308, 1957 Tex. Gen. Laws 748, 748; Act of April 29, 1959, 56th Leg., R.S., ch. 426, 1959 Tex. Gen. Laws 929, 929. The three statutes required the city to make a small cash payment and to fill the land.

provisions of this Act, which shall entirely supersede the conditions and restrictions referred to in said patent.¹¹

As a condition of validation, the city was required to improve the land covered by the patent by “raising or filling to a height of at least three (3) feet above the level of mean high tide, except for such part as may be devoted to channels, canals, or waterways.”¹² Title to any portion of the land, except for that devoted to channels, canals, or waterways” . . . “that has not been so improved by filling to such height before July 1, 1965, shall revert to the State of Texas, and from and after that date neither said City nor its assigns shall have any right, title, claim, or interest to such portion which has not been so improved.”¹³

Other provisions of the 1961 act are relevant to interpreting the quoted language, in particular, provisions authorizing the city to convey land within the act to other persons. The city’s conveyances must contain a condition subsequent requiring the grantee to fill the tract by a specified date, which can be no later than July 1, 1965.¹⁴ The consequences following a breach of the condition differ, depending on whether the date specified in the conveyance is July 1, 1965, or a date prior to July 1, 1965. If the city’s conveyance specifies a date prior to July 1, 1965, on breach of the condition, title to the unimproved land “shall revert to the City of Corpus Christi, and the right of re-entry retained by said City in the conveyance shall be immediately exercised.”¹⁵ If the date specified in the conveyance is July 1, 1965, on breach of the condition, title “shall revert to the State of Texas.”¹⁶ The contrast between these two provisions suggests that “shall revert to the State of Texas” means that title to the land shall revert automatically, without any need for the state to exercise a right of re-entry.

The legislature, however, used the term “condition subsequent” to describe both kinds of restrictions included in conveyances by Corpus Christi to other parties: the restrictions that, if breached, give rise to a right of re-entry and the restrictions that, if breached, cause title to revert to the State of Texas. “Condition subsequent” designates an event that gives the grantor a right to

¹¹Act of May 24, 1961, 57th Leg., R.S. ch. 489, § 4, 1961 Tex. Gen. Laws 1089, 1090 (footnotes added).

¹²*Id.*

¹³*Id.*

¹⁴*Id.* § 5, at 1090.

¹⁵*Id.*

¹⁶*Id.*

terminate the estate and, by re-entry, to be reinvested with the title.¹⁷ Thus, the legislature used language suggesting that breach of either type of restriction gave rise only to a right of re-entry.

We also consider the fact that the 1965 amendment did more than change the reverter date. It ratified and validated the boundaries of Patent No. 158 as determined by judicial decree in specific cases and provided that “[t]his Act shall be and is cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi.”¹⁸ Since article 5421k-3, V.T.C.S. itself did not expire on July 1, 1965, the amendments became effective on August 30, 1965. The entire act is meant to be effective,¹⁹ and this can be accomplished by reading the phrase “shall revert” as creating a right of re-entry in the state. Under this reading, if the right of re-entry was not exercised by August 30, 1965, all provisions of the 1965 amendment became effective as of that date, including the extension of the date of reversion.

The time that has lapsed since the July 1, 1965 reverter date also has a bearing on this question. We understand that the City of Corpus Christi still has possession of the land and has sold some of it to other persons and that the General Land Office has not treated the land as if title were in the state. The construction put on a statute soon after its enactment by the administrative officers charged with enforcement is worthy of serious consideration as an aid to interpretation.²⁰ The contemporaneous administrative construction of the 1965 amendment to article 5421k-3, V.T.C.S. is relevant to your question, but we do not have sufficient information to determine what the construction was. You have submitted correspondence and a memorandum²¹ from the files of the General Land Office arguing that the land reverted to the state in 1965, but these items bear dates from 1987, and one of the letters appears to have raised this idea for the first time.²² Accordingly, we do not believe that we can rely on these materials for an administrative construction contemporaneous to the adoption of the 1965 amendment.

¹⁷*Field v. Shaw*, 535 S.W.2d 3, 5 (Tex. Civ. App.--Amarillo 1976, no writ); *Eyssen v. Zeppa*, 100 S.W.2d 417, 418-19 (Tex. Civ. App.--Texarkana 1936, writ ref'd); Attorney General Opinion JM-675 (1987) at 4. A “conditional limitation,” which is created by terms such as “so long as,” “until,” and “during,” limits the estate by the happening of an event, which, when it occurs, terminates the estate without the necessity of re-entry. *Field*, 535 S.W.2d at 5; *Eyssen*, 100 S.W.2d at 418-19; Attorney General Opinion JM-675 (1987) at 4.

¹⁸Act of March 3, 1965, § 5, 1965 Tex. Gen. Laws 91, 92.

¹⁹67 TEX. JUR. 3D Statutes § 124 (1981).

²⁰*Id.* § 154, at 781.

²¹Letter from Harold G. Kennedy, Assistant Attorney General, to Charles Lewis, Legal Service Division, General Land Office (June 22, 1987); Letter from Tom Nuckols, Attorney, General Land Office, to George Pyle, Urban Engineering, Corpus Christi (Dec. 21, 1987); Memorandum from Dan Miller to Tom Nuckols, General Land Office (Oct. 21, 1987).

²²Letter from Harold G. Kennedy, *supra* note 21 (answering question from General Land Office about V.T.C.S. art. 5421k-3 and raising additional question about the possibility that land reverted to state in 1965).

S U M M A R Y

Article 5421k-3, V.T.C.S., as adopted in 1961, validated the grant to Corpus Christi of certain submerged lands, subject to the condition that the city improve the land by raising or filling it to a height of at least three feet above the level of mean high tide and providing that title to any portion of the *land not so improved before July 1, 1965, shall revert to the state.* A 1965 amendment to article 5421k-3, V.T.C.S., that changed the reverter date to July 1, 1971, became effective August 30, 1965. We are unable to determine whether title to the land was vested in the state as of July 1, 1965, without any action on the part of the state, nor are we able to determine the effect of the 1965 amendment.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee