OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. A. Hodges
County Auditor
Williamson County
Georgetown, Texas

Opinion No. O-5058
Re: Exemption from payment of ad valorem taxes on property acquired by City of Georgetown, Texas for airport purposes.

Dear Sir:

We received your letter dated January 22, 1943 in which you submit the following inquiry:

"Will you kindly inform me if the following property is subject to taxation by the State, County and School?

"The City of Georgetown purchased 600 acres land for an Airport, purchase through a bond issue voted by the citizenship, however an Airport has not been constructed and the Federal Government has notified the City Council that the appropriation has been withdrawn as the funds are to be used for purposes more necessary for the conduct of the war. The City draws a revenue from this land through a lease to an individual, or individuals. The land is not within the City limits.

"Is this described property subject to taxation by the taxing units of the County and State?"

In Opinion No. O-4775, this department held that land purchased by the City of Abilene for an addition to its airport was not subject to taxation. We enclose a copy of

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that opinion.

The constitutional and statutory provisions pertinent to your question are set out in the case of City of Abilene v. State, 113 S.W. (2d) 631 (1938) (Writ refused for want of jurisdiction). We copy from that case as follows:

> "Const. Art. 8, § 1: 'All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value. * * * Provided, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State shall be exempt from taxation.'
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> "Const. art. 11, § 9: 'The property of counties, cities and towns, owned and held only for public purposes, * * *and all other property devoted exclusively to the use and benefit of the public shall be exempt from *** taxation.'
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> "Const. art. 8, § 2: 'The Legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools, (also the endowment funds of such institutions of learning and lands) and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void.'
>
> "Revised Statutes 1925, art. 7150:
>
> "'The following property shall be exempt from taxation, to-wit: * * *
>
> "'All property, whether real or personal,

belonging exclusively to this State, or any political subdivision thereof.'"

Briefly, the facts in the above mentioned case are: The City of Abilene purchased 34 tracts of land, located in Jones County, in the year 1926 to and including 1930 to be used to provide an adequate water supply for said City. The City then leased the land to individuals for agricultural purposes, not having sufficient funds to use the property for the purpose for which it was purchased, to wit: the construction of a lake for the storage of water. It was further found that the City had not abandoned its intention to use the property for the purpose for which it had been purchased.

In holding that the above mentioned property was exempt from taxation, the Eastland Court of Civil Appeals, speaking through Justice Funderburk (City of Abilene case, supra) said:

"We are not unmindful of the rule that provisions for exemption from taxation are to be strictly construed. The goal of construction, however, is the ascertainment of intention. It is not believed that the rule of strict construction would require the adoption of the least reasonable of two possible constructions, and particularly if that one be less effective to accomplish the manifest purpose of the exemption. In the phrase 'used for public purposes,' if the word 'used' be construed to mean the same as exclusively used, then as we have already seen there would be conflict between constitutional provisions. Such result forbids, therefore, the adoption of that construction. It remains, however, to consider whether the word 'used' should be construed to mean the same as continuously, uninterruptedly, or unremittently used. Such a

meaning must be ascribed to the word to justify the conclusion that the Legislature was without power to provide for the exemption of the property in question. Let us consider how such a construction would operate as applied to supposeable cases. Would a county jail become subject to taxation when from the lack of prisoners it was not actually used for a time exceeding a taxing period? Would a county courthouse site, or a city hall site, be subject to taxation and beyond the power of the Legislature to exempt it, if no operations to build the courthouse or city hall had been commenced on the 1st day of January following acquisition? Even if building operations were in progress, could it be said within such a strict meaning of the word that the property was being used for public purposes? It would certainly not be so used in the same sense that it would be, after the completion and occupancy of the courthouse or city hall by the several agencies of government. In the instant case, suppose that with extraordinary expedition a dam had been completed, but that for more than a year, including the beginning of one or more years, because of lack of rain no water had been impounded and for that reason no actual use could be made of the property. Could it be said in that case that the property was subject to taxation because the Constitution denied the Legislature authority to provide for its exemption? We think to hold that the word 'used' was intended to have any such meaning would be unreasonable and would defeat in a large measure the manifest purpose of the grant of power to declare exemptions. It is, therefore, our view that when the facts of a given case establish the ownership of property by a municipal corporation, which has been acquired for an authorized public purpose, and the purpose for which it is owned and held has not been abandoned, such property is to be

> regarded as used for public purposes, and the Legislature has the power to provide by general law for its exemption from taxation. (Underscoring ours).
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> "It is quite apparent that the exemption declared in said R.S. 1925, art. 7150, is more comprehensive than the power which the Legislature possessed. The purport of the statute is broad enough to exempt public property regardless of its use. This the Legislature was expressly denied the power to do. But it does not follow, we think, that the statute is for that reason wholly inoperative. We see no reason why it may not be operative, as an exercise of all the power the Legislature had to declare the exemption. The declared exemption includes public property used for public purposes and to that extent, we think, the statute valid and operative."

You state in your letter that the City of Georgetown purchased the land in question for an airport. From your letter, we gather that the Federal Government had intended to furnish funds for the necessary construction and improvements. It now appears that the Federal Government will not use its funds to construct and improve the land in question for an airport.

As we understand the City of Abilene case, supra, the property in question purchased by the City of Georgetown is exempt from taxation provided said City has not abandoned its intention to devote the property to a public purpose--towit--an airport. In this respect, what the City intends to do is a question of fact which is not within our province to determine. Before we can answer your question, we will have to know whether the City of Georgetown has abandoned all intention to use the property for an airport or for some other public purpose. These facts are necessitated by the City of Abilene case, supra. See also State vs. City of Beaumont, 161 S.W. (2d) 344.

Should you determine that the City has abandoned its intention to use the 600 acres of land in question for a public purpose, it will be necessary for us to know whether or not the City would sell it if offered a "fair price" for same. We would also need to know what type of bonds the City of Georgetown issued to purchase the land and, should the City sell the land, whether the consideration of such sale would be applied to the bonded indebtedness. In our opinion, some, if not all, of these facts are required by the case of State vs. City of Houston, 140 S.W. (2d) 277 (Writ Refused).

We wish to point out that under certain conditions the leasehold interest in this land would be subject to taxation. Article 7173, R.C.S.

We sincerely regret that we cannot answer your request as submitted to us in your letter of January 22nd, last. We might suggest that you consult with your District Attorney about this matter. It might be possible that you can obtain and give us the necessary facts, giving due regard to the three cases cited herein, that we can definitely answer your question.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Lee Shoptaw

Lee Shoptaw
Assistant

LS:nw

APPROVED FEB 12, 1943

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN