0-5277

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable James I. Perkins
Chairman, Board of Managers
Texas State Railroad
Rusk, Texas

0-5277

Dear Sir:

Opinion No. 0-5277
Re: Authority of Board of Managers of the Texas State Railroad to grant title to certain land.

Your letter to this department, dated May 1, 1943, requesting an opinion of this department on the above captioned subject, has been received and has attention. Your letter reads as follows:

> "A few days ago the Legislature passed a bill, a copy of which is enclosed, transferring the title to approximately 21 acres of land from the Rusk State Hospital to the Texas State Railroad to be used for plant sites for plants to be erected along the Texas State Railroad to encourage business for the railroad.
>
> "We now have a large concern that will probably ship several hundreds of cars of freight per year in dehydrated and canned vegetables and dried eggs that desires to locate in this industrial section provided we can get some of the citizens of Rusk to build them a large plant building, approximately 100 feet by 200 feet. This building of the cheapest construction will cost probably $25,000.00 or $30,000.00, and the operating company desires to rent the building and not erect it as they will be able to deduct the rent paid even though it pays the building out in five to seven years. They cannot do this if they erect the building.

COPY

NO COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

"Of course, before starting the construction of this building the citizens putting up the money for it want to be certain that they get a fee simple title to this property and they have a valid conveyance. I do not want to get them into a difficulty or lose their money, but the Board of Managers of the Texas State Railroad wants to be able to pass a valid fee simple title to the property. Judge Speer is familiar with this matter. James I. Perkins who was re-appointed for a two year term as Manager on or about the 25th day of February, 1943, and who joined with the Lieutenant Governor John Lee Smith and appointed Messrs. H. V. Hamilton and J. E. Angly of Palestine as the other board members. The Hon. J. E. Angly succeeded himself as his two years term had theretofore expired on March 11, 1943, and Hon. H. V. Hamilton having been appointed at the same time with Mr. Angly to fill the term of Hon. Lynch Davidson whose two year term expired on March 11, 1943, and about the 28th day of March, 1943, Hon. John Lee Smith appointed the said James I. Perkins, under power vested in him, as Chairman of said Board. We would, of course, like to have a meeting of the Board of Managers and pass the proper resolution and authority and execute a proper deed based upon a nominal consideration to the parties desiring to erect this building. We do not expect to grant a fee simple conveyance to any of this property except where it is necessary that the parties using it have a fee simple title for the purpose of placing bonds and mortgages against it. It is very necessary that we have a ruling in this matter in the next three or four days for the reason that the construction and erection of a large plant of this kind for dehydrating and processing vegetables, eggs and etc. will have to be fully constructed within the next six or seven weeks or it will be too late to save a large part of this season's vegetables and truck crops in East Texas, 90 per cent of which will be used by the Government in its war effort."

You attach to your letter a copy of Senate Bill No. 188. This bill provides that the title to the land in question is transferred from the Rusk State Hospital and vested in the Texas State Railroad. The authority vel non of the Legislature to transfer title to State lands by Bill is not passed on in this opinion in view of our opinion based on the constitutional and statutory provisions applicable, we think, to the situation presented in your letter.

In the year 1917, the Legislature established the Rusk State Hospital. The Act, among other things, provides that so much of the lands of the East Texas Penitentiary at Rusk, Texas, as may be requisite and needful is set aside for the use of said hospital; that the Governor, Comptroller of Public Accounts and State Treasurer shall constitute a board to determine what, if any, property owned by the State at Rusk, Texas, and used in whole or in part by the penitentiary system, shall be set apart to and used permanently by the hospital. (See Act April 4, 1917, Chapter 198, Sec. 1).

Section 9 of Article 7 of the Constitution of this State reads as follows:

> "All lands heretofore granted for the benefit of the Lunatic, Blind, Deaf and Dumb, and Orphan Asylums, together with such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said Asylums. And the Legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in section 4 of this Article."

In view of the quoted constitutional provision, it is the opinion of this department that the Board of Managers of the Texas State Railroad cannot pass title to the land in question.

APPROVED MAY 27, 1943

Gerald C. Mann

Yours very truly

ATTORNEY GENERAL OF TEXAS

By E. P. Price
Assistant

APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN

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