



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Burl Brittain
County Auditor, San Patricio County
Sinton, Texas

Dear Sir:

Opinion No. 0-5380
Re: Authority of county
to lease land for agency
of Federal Government
to use as an airport.

Your letter of October 29, 1943, regarding the above stated matter has received our careful attention. The question you present is whether San Patricio County may enter into a lease agreement with the fee owner of certain land, the land to be used as an airport by the Navy during its training program, and all construction work to be undertaken by the Civil Aeronautics Authority.

In Opinion No. 0-4972, we pointed out that neither Article 1269h, Vernon's Annotated Civil Statutes, nor any other statute we could find, authorizes a county to acquire land for an airport by lease from an individual. We further pointed out that Article 1269j, Vernon's Annotated Civil Statutes, applies only to cities having a population of more than forty thousand inhabitants. A copy of Opinion 0-4972 is enclosed herewith.

The facts you present differ from those involved in Opinion 0-4972, however, in that here the land is to be acquired for the use of the Navy.

Article 5248e, Vernon's Annotated Civil Statutes, provides:

"Section 1. An city or county in the State, separately or jointly, is authorized to acquire lands for the use of the United States Government, either by a lease for a term of years or in fee simple title; said lands shall lie within the limits of the county acquiring same, or if acquired by a city, within the limits of the county in which said city is located.

"Sec. 2. For the purpose of acquiring leasehold interest or fee simple title to lands for the use of the United States Government, authorized above, the said city or county is authorized to appropriate any available funds and also to issue time warrants in payment thereof; provided, however, that in the event time warrants are proposed to be issued, the provisions of Article 2368-a of the Revised Civil Statutes, of the State of Texas shall be followed in the issuance of said time warrants.

"Sec. 3. For the purpose of acquiring leasehold or fee simple estate in lands for the use of the United States Government, any city or county may condemn lands for such purpose, and said condemnation may be for any period of years or in fee simple title, and in the acquisition of said interest desired, said city or county may, immediately after filing condemnation suit, as now provided by law, take possession of said lands by depositing with the County Clerk the amount of money estimated by the Commissioners' court or City Council of the city or county involved, to be the just compensation for the interest in the land taken. Said petition for condemnation shall set forth the amount of said money so found by the Commissioners' Court or City Council, to be just, and such finding shall be made by said body prior to the filing of the petition of condemnation. In the event the Special Commissioners appointed under the condemnation statutes, after a hearing as provided by law, find the just compensation to be greater than the amount fixed by the Commissioners' Court or City Council, then an additional amount shall be deposited with the County Clerk by the taking authority, so as to equal the amount found by the Commissioners. Condemnation may be in the name of the city or county and said city or county may at any time after the taking, which shall be from the date the deposit of the money estimated by the Commissioners' Court or City Council, or the date of deposit of the amount fixed by the Special Commissioners in the event the taking is not desired until after the Commissioners have acted thereon, transfer the interest acquired by the taking to the United States Government.

Sec. 4. Any city or county may contract with the United States Government or its agencies obligating itself to acquire a leasehold interest, or fee simple title in land as above authorized and any agreement heretofore executed by any city or county with the United States Government binding itself to acquire interest in land for the Government is hereby validated.

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"Sec. 5. If any section, sub-section, sentence, clause or phrase of this Act shall be held unconstitutional for any reason, such fact shall not affect the remaining portions hereof."

In our opinion San Patricio County is authorized, under this article, to lease land from an individual to be used as an airport by the Navy during its training program.

APPROVED NOV 13, 1943

R. W. Archibald

ATTORNEY GENERAL OF TEXAS

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Jas. D. Sullen
 Jas. D. Sullen
 Assistant

JDS:KP

Encl.

7/20

