



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Wm. Yelderman  
Acting County Attorney  
Travis County  
Austin, Texas

Dear Sir:

Opinion No. 0-6210  
Re: Authority of City of Austin  
to acquire by purchase or  
condemnation more than 640  
acres of land outside the  
City limits for parks and  
play grounds.

We have your opinion request on the above question and note that your interest in the question, as Acting County Attorney, as stated by you, is that additional acquisitions of land by the City of Austin outside the city limits will affect the tax revenues of the county. You ask in your opinion request the following questions:

"1. Does Article 6081-B prohibit any governing body of any incorporated city from acquiring, for the purpose of parks and play grounds, acreage in excess of 640 acres outside of its city limits, by purchase or condemnation?

"2. Does Article 6081-D prohibit any governing body of any incorporated city from acquiring, for the purpose of parks and play grounds, acreage in excess of 640 acres outside of its city limits, by purchase or condemnation?

"3. Do these articles mean that the governing body of any incorporated city may own and hold more than 640 acres outside of the city limits, to be used for the purpose of parks and play grounds, but that they can never

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acquire more than 640 acres at any one time, by purchase or condemnation?

"4. Do Articles 6081-B and 6081-D limit the rights conferred upon Home Rule cities by Article 1175, Section 15, with reference to acquiring property outside of the city limits for parks and playgrounds?"

The answer to your first question is that Article 6081b, Vernon's Annotated Civil Statutes, is a bracket law applicable only to cities of a certain population by the 1920 census. Austin does not come within the classification because it had less than 43,000 inhabitants by the 1920 census. Therefore, the answer to your question is no.

Article 6081d, Vernon's Annotated Civil Statutes, which you inquire about in your second question, contains provisions which are similar to those contained in Article 6081b, except that it is not a bracket law. Section 1 of that article provides:

"Sec. 1. That the governing body of any incorporated city in this State may receive and hold through gift or under dedication, and is hereby empowered to condemn or to purchase lands without its territorial limits and within the county in which such city is situated for the purpose of establishing and maintaining thereon public recreational parks and playgrounds, either or both, no one of such parks or playgrounds which may be acquired by purchase or through condemnation to exceed 320 acres in area and the total acreage outside of the limits of the city which may be acquired by purchase and through condemnation proceedings, either or both, shall not exceed 640 acres."

Section 6 of Article 6081d limits the application of Section 1 to those cities that do not have contrary provisions in their charters. Section 6 provides:

"Nothing herein contained shall be construed as repealing any provisions of any special charter of any incorporated city, but

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the powers, terms and provisions hereof shall exist as alternative powers, terms and provisions of any such special charter and any city which shall hereafter adopt or amend its own charter under the terms of the Home Rule provisions of the Constitution may provide in any such charter or amendments thereto provisions on the subject covered hereby other than and differing from those herein provided."

Section 1 of Article XXVI of the charter of the City of Austin (1938) authorizes the City Council to acquire land outside the city limits for parks and playgrounds, as follows:

"The City Council shall have power to acquire land inside or outside of the corporate boundaries of the City of Austin, by purchase or condemnation, for the purpose of establishing or enlarging any park, parkway or playground, and to improve, equip, maintain and regulate the use of game, and the applicable provisions of the laws of the State of Texas relating to eminent domain are adopted and made a part of this Article and shall apply in condemnation proceedings hereunder, but the City of Austin shall not be required to execute the bond referred to in said laws."

Article 608ld, therefore, does not limit the amount of land which the City of Austin may acquire by condemnation and purchase outside the city limits for parks and playgrounds under Article XXVI of the City Charter. This is a special charter and it is not repealed by Article 608ld. Also, Austin is a Home Rule City and it is expressly authorized by Section 6 of Article 608ld to "provide in any such charter or amendments thereto provisions on the subject covered hereby other than and differing from those herein provided." We, therefore, answer your second question no.

In view of our answers to your first two questions, it becomes unnecessary to answer your third question.

Your Question No. 4 is an abstract question as far as the City of Austin is concerned. Article 608lb, in

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Section 6 and Article 6081d, in Section 6 (copied above) each provide that "nothing contained in this act shall be construed as repealing any provisions of any special charter of any incorporated city." The City of Austin has in Article XXVI a special provision on parks and playgrounds which gives it greater powers than Article 6081d. It is true that Section 15 of Article 1175, Revised Civil Statutes, 1925, confers the same powers on the City of Austin as to acquiring parks and playgrounds outside the city limits as does Article XXVI of the City Charter. It is not necessary, however, to pass on whether Article 6081d limits the powers conferred on Home Rule Cities by Section 15 of Article 1175 because Article 6081d, by its own provisions, is not applicable to cities like Austin which have a special charter provision on the subject of parks and playgrounds which is other than and differs from Article 6081d. We, accordingly, find no necessity for answering your fourth question.

Trusting that the foregoing gives you the information desired, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

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