



**THE ATTORNEY GENERAL  
OF TEXAS**

Grover Sellers

~~XXXXXXXXXXXXXXXXXXXX~~  
ATTORNEY GENERAL

**AUSTIN 11, TEXAS**

Honorable Bascom Giles, Commissioner  
General Land Office  
Austin, Texas

Dear Sir:

Opinion No. 0-6827  
Re: H.C.R. 41, 49th Legislature  
of Texas, does not confer au-  
thority upon the Land Com-  
missioner to sell the land  
described therein.

Your request for opinion has been received and  
carefully considered by this department. We quote from your  
request as follows:

"I would appreciate your advise and opinion  
regarding the effect of House Concurrent Resolution  
No. 41 passed by the 49th Legislature. Please inform  
me as to whether or not this Resolution has the  
effect of law in conferring the authority upon me to  
sell the land described therein."

Said House Concurrent Resolution reads as follows:

"H.C.R. No. 41.

"HOUSE CONCURRENT RESOLUTION

"WHEREAS, There is a tract of land located in  
Waller County near Prairie View Normal and Industrial  
College of approximately one hundred (100) acres,  
which has never been used for any purpose by the State  
of Texas; and

"WHEREAS, Said one hundred (100) acres of land  
have been within the enclosure of a private citizen  
and have been in constant use for over twenty-five  
(25) years; and

"WHEREAS, The said land has never brought any  
revenue whatsoever to the State of Texas; and

"WHEREAS, the said land was given as a gift to  
the Governor of the State of Texas when the site of

Prairie View Normal and Industrial College was purchased; and that said land does not adjoin the land used by Prairie View Normal and Industrial College; therefore, be it

"RESOLVED by the House of Representatives, the Senate concurring, That the Commissioner of the General Land Office is hereby authorized to advertise for sale and award to the highest bidder the said one hundred (100) acres of land in the Solomon Smith Survey in Waller County, Abstract 254, described as follows:

"Beginning in the center of road at a point South  $89^{\circ} 43'$  West 6.84 varas and north  $00^{\circ} 39'$  East 5.22 varas from an iron pipe set under fence corner near bend of county road, the Northwest corner of this tract; thence along center of road North  $89^{\circ} 43'$  East 812.9 varas to the upper west line of the N. W. Bush survey; Thence south  $10^{\circ}$  west 768.8 varas to an interior corner of the N. W. Bush survey and the upper southeast corner of the Solomon Smith Survey; thence west 688.86 varas along and with the boundary line of the N. W. Bush survey to a point in the center of North-South road; thence North  $00^{\circ} 39'$  East along the center of said road 747.2 varas to the place of beginning, containing 100 acres; and, be it further

"RESOLVED, That all minerals be reserved for the use and benefit of the Permanent Public Free School Fund; and, be it further

"RESOLVED, That the consideration for this land shall be paid to the Commissioner of the General Land Office of the State of Texas for the benefit of the Permanent Public Free School Fund; that a patent to the said land shall be issued to the successful bidder by the Governor and the Commissioner of the General Land Office to the State of Texas. Upon the payment of said consideration and the issuance of said patent, the title of the successful bidder to said land shall become absolute, subject to the reservations herein made.

John Lee Smith

President of the Senate

C. H. Gilmer

Speaker of the House

"I hereby certify that H.C.R. No. 41 was adopted by the House on April 12, 1945, and that the House

concurrent in Senate amendment to H.C.R. No. 41 on May 22, 1945, by the following vote: Yeas 110, Nays 0, and 2 present and not voting.

Clarence Jones

Chief Clerk of the House

"I hereby certify that H.C.R. No. 41 was adopted by the Senate, as amended, on May 22, 1945, by a viva voce vote.

Noel K. Brogn

Secretary of the Senate

APPROVED: May 28, 1945  
Date

Coke R. Stevenson  
Governor

"FILED IN THE OFFICE OF THE SECRETARY OF TEXAS, THIS 29TH DAY OF MAY, 1945, AT 9 O'CLOCK AND 30 MINUTES A.M.

Claude Isbell  
Secretary of State"

Article 3, Section 29 of our State Constitution provides that the enacting clause of all laws shall be: "Be it enacted by the Legislature of the State of Texas".

Section 35 of this Article provides that the subject of a bill shall be expressed in its title.

Said H.C.R. No. 41, supra, contains no enacting clause and does not express its subject in its title.

Said H.C.R. No. 41, supra, is not a bill. Section 30 of Article 3 of our State Constitution provides in part as follows:

"No law shall be passed except by bill. . . ."

We call your attention to the case of the State of Texas v. Delesdenier, 7 Tex. 76. The facts in this case show that the Congress of the Republic of Texas passed a joint resolution purporting to authorize the President to sell islands owned by the Republic of Texas. Under the resolution patents were issued on certain lands in Galveston Island. The Supreme Court of Texas in 1851 held that the purported patents were void and that the joint resolution

was not a law and was ineffective to authorize the sale of such land in Galveston Island.

The Supreme Court of Texas in the case of City of San Antonio v. Micklejohn, 33 S. W. 753, 89 Tex. 79, citing State v. Delesdenier, 7 Tex. 76, said:

"A resolution proper is not a law."

In Moshien v. Rollins, 79 S.W. (2) 672, the court said:

"However, if we be mistaken in this conclusion, this resolution cannot be given the effect of a law. Our constitution (Article 3, Sec. 30) provides that 'no law shall be passed, except by bill . . . City of San Antonio vs. Micklejohn, 89 Tex. 79, 33 S.W. 735.

"This resolution contained the following paragraph: 'Resolved by the House of Representatives, the Senate concurring, that said corporations use the necessary care and diligence in keeping their right of ways clear of any grasses, weeds or other plants that tend to spread, to the end that the increased burdens incident to the enforcement of this Conservation Act shall not add unnecessary cost to the farmer in his efforts to protect and conserve the potential productivity of his soil.'

"This resolution cannot be regarded as a law prohibiting the highway department from planting or permitting Bermuda Grass to grow along the State highways."

In Conley v. Texas Division of United Daughters of the Confederacy, 164 S.W. 24, the Court said:

"The chief distinction between a resolution and a law seems to be that the former is used whenever the Legislative body passing it wishes to merely express an opinion as to some given matter or thing, and is only to have a temporary effect on such particular thing; while by the latter it is intended to permanently direct and control matters applying to persons or things in general. See 34 Cyc. p. 1667; 25 Cyc. p. 163."

Also, see Humble Oil & Refining Co. v. State, 104 S.W. (2) 174.

You are respectfully advised that in view of the above authorities, it is the opinion of this department

that House Concurrent Resolution No. 41 of the 49th Legislature of Texas is ineffective and does not authorize the Land Commissioner of Texas to sell the land described in the Resolution. For the Commissioner to be so authorized an Act of the Legislature would be required and a mere resolution is wholly insufficient.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

s/ Wm. J. Fanning

By Wm. J. Fanning  
Assistant

WJF:BT-cg

Approved Sep. 26, 1945  
s/ Carlos C. Ashley  
First Assistant Attorney General

Approved opinion committee  
By BWB, Chairman