



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD**  
ATTORNEY GENERAL

July 10, 1953

Hon. Bascom Giles  
Commissioner  
General Land Office  
Austin, Texas

Opinion No. S-66

Re: Assignability of a good  
faith claimant's prefer-  
ential right to purchase  
land under Section 6,  
Article 5421c, V.C.S.

Dear Sir:

Your opinion request of June 4, 1953, reads  
as follows:

"We desire the opinion of your office as  
to whether or not a Good Faith Claimant's pre-  
ferential right under Article 5421c, Section 6,  
V.A.C.S., is assignable.

"E. H. Schuch, San Angelo, Texas, filed  
in the General Land Office on February 4, 1953,  
application to purchase certain land in Coke  
County as a Good Faith Claimant under the pro-  
visions of an act approved June 19, 1939. A  
portion of the area included within Mr. Schuch's  
application is within the enclosure of adjoining  
lands which he owns. However, other por-  
tions of the area in said application are out-  
side of Mr. Schuch's enclosure. Mr. Schuch has  
acquired assignments from the owners of the lands  
adjoining the balance of such alleged vacancy and  
such assignments are limited to the area described  
in Mr. Schuch's application. There have been filed  
in this office affidavits and supporting instru-  
ments to the effect that all of the alleged vacant  
area is included within enclosures of Mr. Schuch's  
land and within the enclosures of Mr. Schuch's as-  
signors.

"At the date Mr. Schuch's application  
(S.F. 15495) was filed in this office, Feb-  
ruary 4, 1953, there was no well producing  
oil or gas within five miles of the area in-  
cluded in said application but a producing  
oil well has been brought in since that date.  
It has been the policy of this office to re-  
quire each land owner to make a separate  
Good Faith Claimant application on the por-  
tion of a vacant area within his enclosure.  
If this office approves Mr. Schuch's appli-  
cation for the entire area described in such

application, the State will be entitled to reserve 1/8 of the sulphur and 1/16 of all other minerals as a free royalty to the State on the entire area. If, however, this office requires that each land owner file separate Good Faith Claimant applications at this date, the State will be entitled to reserve a free royalty of 1/8 of the sulphur and all other minerals on those portions of said vacant area not within Mr. Schuch's enclosure.

". . .

"Your opinion as to whether or not such preferential rights are assignable prior to the possessors of such rights making application to exercise same is requested by this office in order that the proper mineral reservation to be reserved by the State can be ascertained."

Under the provisions of Article 5421c, V.C.S., a "good faith claimant" is given a preferential right to purchase or lease unsurveyed school land, commonly called a "vacancy." Section 6(a) of said statute, omitting portions not material to this inquiry, defines "good faith claimant" as

"any person . . . occupying or using, or theretofore occupying or using, or whose predecessors in interest, have occupied or used a vacancy . . . with a good faith belief that the same was included within the boundaries of a survey . . . previously . . . awarded . . . . Provided a person . . . or those under whom he claims, shall have said land in his enclosure or under definite recognized boundaries and be in possession thereof for . . . ten (10) years with a good faith belief that he was the owner . . . , except that whenever the owner of the tract . . . adjoining the alleged vacant area makes application to buy . . . and no prior application . . . is on file, then such owner . . . who otherwise qualifies as a good faith claimant, shall be considered a good faith claimant without regard to the length of time he may have owned . . . or had such alleged vacant

tract inclosed, or under definite recognized boundaries and in possession with the belief that the vacant area was included within his survey." (Emphasis added.)

From the underlined portions of this statute, it will be observed that, with the exception below, an assignee of a preferential right in vacant lands, regardless of his own good faith, will himself be a "good faith claimant" if his predecessors in interest held such status. The exception is where the vacancy assignee's status as "good faith claimant" depends on his owning adjoining land and he owns none. In the latter case, whatever rights he has must be as assignee of a good faith claimant, which requires consideration of whether such rights are assignable.

In Rone v. Kuehn, 81 S.W.2d 194 (Tex.Civ.App. 1935, error ref.), cited in your opinion request, a vacancy applicant filed his application, after which the tract of which the vacancy was a part was sold along with the preferential right in the vacancy, and the grantee thereupon filed his application under the provisions of the 1931 Act. In upholding the preferential right of the grantee or assignee to purchase, the court said:

"We think it conclusively appears that appellee's predecessor in title had a prior right of purchase, and that such right passed to appellee . . . .

". . . The fact that appellee may have thought that the strip was unsurveyed school land when he purchased from Stolley could not affect his right of recovery; it appearing that Stolley's preference right to purchase passed to appellee. We think Stolley's preference right was an assignable one, and could be transferred to appellee. Stiles v. Hawkins (Tex.Com.App.) 207 S.W. 89; Gunnels v. Cartledge, 26 Tex. Civ. App. 623, 64 S.W. 806; 34 Tex. Jur. p. 74; 5 Tex. Jur. p. 18." (81 S.W.2d at 195)

It is evident that the court in that case did not require the assignee to be a good faith purchaser. The effect of the opinion is that the assignee was entitled

to stand in the shoes of his assignor, who was a good faith claimant.

In Graham v. Henry, 17 Tex. 164, 167 (1856), involving an assigned land certificate, the court said:

"Whatever exclusive right a man has in anything, he has a right to dispose of absolutely as he pleases, provided he makes no disposition of it prohibited by law . . . Hence any incipient title or contingent interest which is susceptible of being ripened into a title to lands may be assigned; and such has been the usage in this and other countries. It has never been supposed necessary to consummate the title before the right could be assigned."

We have considered the following portion of Section 6(g) of Article 5421c:

"No title to either land or mineral interest in land acquired from the State under preference right shall ever be held to pass as an after-acquired title by reason of any covenant of general warranty, description, or other provision, contained in any conveyance executed prior to the date of award under such preference."

However, inasmuch as the assignee in this case is to receive the award from the State, no "after-acquired title" is involved, and accordingly this paragraph can have no application here.

We find nothing in the 1939 amendment to Article 5421c (Acts 46th Leg., 1939, ch. 3, p. 465) prohibiting the assignee of a good faith claimant from making an application to purchase the vacant land covered by the assignment and receiving an award thereof under this statute. It is our opinion, therefore, that under the above authorities Mr. Schuch succeeded to the rights of his grantors or assignors and is entitled to purchase the entire area described in his application under the provisions of Section 6 of Article 5421c.

SUMMARY

The preferential right of a "good faith claimant" under Sec. 6 of Art. 5421c, V.C.S., is assignable. The assignee of a "good faith claimant," regardless of his own good faith, is himself a "good faith claimant" except in cases where the assignee's status of "good faith claimant" depends on his owning adjoining lands and he owns none.

APPROVED:

Jesse P. Luton, Jr.  
Land Division

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Reviewer

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Yours very truly,

JOHN BEN SHEPPERD  
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By *J. Arthur Sandlin*  
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