



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

February 3, 1966

Mr. Walter W. Broemer,
Superintendent
Alabama-Coushatta Indian
Reservation
Livingston, Texas

Opinion No. C-593

Re: Whether the Alabama-Coushatta Indian Tribal Members can create a Public Housing Authority as a separate corporate entity to which the Commission for Indian Affairs and the Alabama-Coushatta Indian Tribal Council could make a forty-year lease of State Trust Land to develop a low-rent housing project.

Dear Mr. Broemer:

Your letter of January 11, 1966, requesting our opinion relative to the above captioned matter reads, in part, as follows:

"In reference to Opinion No. C-520, we have proceeded in making application with the Public Housing Administration for a Public Housing Project on the Indian Reservation. The Public Housing Administration finds that they cannot provide the necessary funds for low-rent housing because the Texas Commission for Indian Affairs has the power to issue bonds for a period of only twenty-five years. Low-rent housing projects require forty-year bonds.

"Therefore we would like to request the opinion as follows:

"Can the Alabama-Coushatta Indian Tribal Members create a Public Housing Authority as a separate corporate entity to which the Texas Commission for Indian Affairs and the Alabama-Coushatta Indian Tribal Council could make a

forty-year lease of State Trust Land to develop a low-rent housing project."

In answering this question, it is necessary to review certain legislative and congressional enactments. For a more exhaustive historical summation, see Attorney General's Opinion No. WW-43 dated March 5, 1957.

By an Act dated February 3, 1854 (4 Gammel 68) the State of Texas provided funds and authority for the purchase of 1,280 acres of land for the Alabama Indians to be used by that tribe as a home. The Commissioners appointed under this Act did arrange for the purchase and conveyance to the tribe of Alabama Indians of several tracts of land, and the deeds from the several grantors specifically made reference to the Act of 1854. Thus to accurately determine the nature of the estate conveyed, we must construe the deeds and the Act together.

Section 3 of 1854 Act provides, in part, as follows:

" . . . and that said Indians shall not alien, lease, rent, let, give or otherwise dispose of said land or any part thereof to any person whatsoever. And should the State of Texas hereafter provide a home for said tribe of Indians, and settle them thereon, then the said twelve hundred and eighty acres of land, with its improvements, shall become the property of the State." (Emphasis added)

From the quoted Section of the Act, it is apparent that the Indians received less than a fee simple estate in the lands. There are specific restrictions imposed on the Indians, which bar any conveyance or lease by them of this land or any part thereof, and further their possession and enjoyment of the lands are dependent upon the Legislature as evidenced by the quoted language. The reversionary interest is in the State of Texas and should the Legislature see fit to provide a lawful procedure for leasing these lands, it could do so.

In 1928, the Indian Reservation was enlarged when an adjacent tract of 3,071 acres was purchased by the United States "in trust for the Alabama and Coushatta Indians of Texas." Under Public Law 627, Acts of 83rd Congress, 1954, 68 Stat. 768, 25 U.S.C.A., Secs. 721 et. seq., the Federal Government was authorized to deed said tract to the State of Texas, to be held by it "in trust for the benefit of the Alabama and Coushatta

Tribes of Texas, subject to such conditions regarding management and use as the State of Texas may prescribe and the disposition of such lands shall be subject to approval of a majority of the adult members of the Alabama and Coushatta Tribes of Texas." (Emphasis added.) Thus Congress terminated Federal supervision over the tribe.

In anticipation of the adoption of Public Law 627, the Texas Legislature adopted Senate Concurrent Resolution No. 31 (Acts 1953, R.S., p. 1078) authorizing the Governor to accept on behalf of the State a transfer of the trust responsibilities of the United States respecting the lands and other assets of said tribes, and providing further:

"That the Governor is authorized to designate the State agency in which such trust responsibilities shall rest, and the agency so designated shall have authority to promulgate rules and regulations for the administration of the trust and the protection of the beneficial interests of the Indians in such lands and other assets." (Emphasis added)

The Board for Texas State Hospitals and Special Schools was designated by Governor Allen Shivers as the agency to administer the trust.

Section 2. of Article 3174b, Vernon's Civil Statutes, provides in part:

" . . . Effective September 1, 1949, the control and management of, and all rights, privileges, powers, and duties incident thereto including building, design and construction of the Texas State Hospitals and Special Schools which are now vested in, and exercised by the State Board of Control shall be transferred to, vested in, and exercised by the Board for the Texas State Hospitals and Special Schools.

Section 3 of Article 3174b, Vernon's Civil Statutes, provides:

"Section 3. The term 'Texas State Hospitals and Special Schools' as used in this Act shall mean . . . The Alabama Coushatta Indian Reservation, Livingston, Texas . . . and all other institutions

heretofore or hereafter referred to as 'eleemosynary institutions' or 'hospitals and special schools.'

House Bill No. 1096, Acts 59th Legislature, 1965, Ch. 279, p. 552, codified as Article 5421z, Vernon's Civil Statutes, which creates the Commission for Indian Affairs, provides as follows in Section 8:

"Section 8. All powers, duties, and functions with respect to the supervision, management, and control of the Alabama-Coushatta Indian Reservation, previously vested in the Board of Texas State Hospitals and Special Schools, and all appropriated balances, property, personnel, and records used by the Board in conjunction with such powers, duties, and functions are transferred to the Commission for Indian Affairs."

Section 14 of House Bill No. 1096 provides:

"Section 14. All bonds issued by the Tribal Council shall mature serially or otherwise not more than 25 years from the date of issuance, . . ." (Emphasis added).

Section 15 of House Bill No. 1096 provides:

"Section 15. Subject to the restrictions contained in this act, the Tribal Council and the Commission have complete discretion in fixing the form, conditions, and details of the bonds; . . ." (Emphasis added).

Any discussion of the powers and duties of the Commission for Indian Affairs would not be complete without stating that the Commission must have express authority to issue bonds and other negotiable securities, and this is not a power that may be implied. In this connection, in Lasater v. Lopez, 110 Tex. 179, 217 S.W. 373, 376 (1919), the Supreme Court said:

"Without special authority, a court charged with the administration of the business affairs of a county is without the power to issue negotiable securities, depriving the county of true defenses against the original creditor. It is not a power to be implied. It does not exist unless expressly conferred by law. Such

Mr. Walter W. Broemer, page 5 (C- 593)

is the established doctrine in this State,
and has been from an early time." (Emphasis
added)

As set forth in Attorney General's Opinion C-520, the control and management of the affairs and property of eleemosynary institutions established by law were vested in the Board for Texas State Hospitals and Special Schools. Control and management of building construction on the Alabama-Coushatta Reservation was vested in the Board for Texas State Hospitals and Special Schools by virtue of Section 2 of Article 3174b. Section 8 of House Bill No. 1096 transfers control and management of building construction to the Commission for Indian Affairs as the Commission's primary responsibility is the development of the human and economic resources of the Indian Reservation.

It is our opinion that the express authority to issue public bonds and other negotiable securities by the Commission is governed by Sections 13, 14, 15 and 16 of House Bill No. 1096. Section 14 of House Bill No. 1096 specifically states the maturity of all bonds issued is to be not more than twenty-five years from the date of issuance. The Commission's power does not exist unless expressly conferred by law. The Commission must operate within the framework of the express authority to issue bonds and cannot do indirectly what it may not do directly. The Tribal Council may issue revenue bonds or any other evidence of indebtedness only after having obtained the written approval of the Commission. Therefore, the Tribal Members cannot create a Public Housing Authority as a separate corporate entity to which the Commission and the Tribal Council could make a forty-year lease of State Trust Land to develop a low-rent housing project.

S U M M A R Y

The Alabama-Coushatta Indian Tribal Members cannot create a Public Housing Authority as a separate corporate entity to which the Commission for Indian Affairs and the Alabama-Coushatta Indian Tribal Members could make a forty-year lease of State Trust Land to develop a low-rent housing project.

Very truly yours,

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Mr. Walter W. Broemer, page 6 (c- 593)

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