



Office of the Attorney General  
State of Texas

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ATTORNEY GENERAL

September 30, 1992

Honorable John H. Hannah, Jr.  
Secretary of State  
P. O. Box 12697  
Austin, Texas 78711-2697

Letter Opinion No. 92-58

Re: Whether, and by what means, the  
State of Texas may accept legal title to  
surplus federal real property (RQ-394)

Dear Secretary Hannah:

You have asked us by what mechanism the state, cities, or counties may accept legal title to surplus federal real property, including improvements on the property. We assume that you are concerned with the statutory authority for such acceptance, since advice concerning the structuring of transactions is not within the purview of the Opinion Committee.

The State of Texas has the same right to acquire real or personal property as an individual. It may acquire real property by conveyance, will, or otherwise. 67 TEX. JUR. 3d *State of Texas* § 56 (1989); see also *Conley v. Daughters of the Republic*, 156 S.W. 197 (Tex. 1913).

The General Land Office, by the commissioner, has statutory authority to accept gifts, devises, or bequests of real property. Nat. Res. Code § 31.065(a). "Real property so acquired by the state becomes public free school land unless the person making the gift, devise, or bequest provides that the real property is to be possessed, administered, or used by a particular state agency, board, commission, department or other particular state entity." *Id.* In order to insure that the real property not become part of the permanent school fund property, then, the state must negotiate for particular dedication by the federal government.

Political subdivisions of the state also have such authority. Under section 270.004(a) of the Local Government Code,

[t]he commissioners court of a county may:

- (1) contract with the United States . . . for:
  - (A) the acquisition of land or an interest in land *located in the county* that is owned by the United States; or
  - (B) the acquisition of temporary housing on land that the United States owns or controls;
- (2) acquire from the United States, by purchase, gift, or otherwise, land or housing described in Subdivision (1).  
[Emphasis added.]

As the emphasized language makes clear, a county could only acquire surplus federal land located within its boundaries. We assume, without deciding, that in the event the surplus federal land were in more than one county, it could be partitioned in such a way that the deeds of gift were consistent with this provision.

A more limited authorization for municipalities to acquire surplus federal real property by gift may be found in section 273.001 of the Local Government Code:

- (a) A municipality may, in accordance with this chapter, acquire property separately or jointly with another municipality or other governmental entity by gift, dedication, or purchase, with or without condemnation.
- (b) The property must be located within the county where the municipality or other governmental entity is located. The property may be located inside or outside the corporate limits of the municipality.

Section 273.001(c) of the Local Government Code provides a list of the permissible public purposes for which property acquired under its authority may be used. The list, which is exhaustive, limits those uses to:

- (1) parks and playgrounds;
- (2) hospitals;
- (3) the extension, improvement, and enlargement of its water system, including riparian rights, water supply reservoirs, standpipes, watersheds and dams;
- (4) the laying, building, maintenance, and construction of water mains;
- (5) the laying, erection, establishment, and maintenance of necessary appurtenances or facilities that will furnish to the inhabitants of the municipality an abundant supply of wholesome water;
- (6) sewage plants and systems;
- (7) rights of way for water and sewer lines;
- (8) airports and landing fields;
- (9) incinerators and garbage disposal plants;
- (10) streets, boulevards, alleys, or other public ways; or
- (11) a right of way needed in connection with property used for any of these purposes.

While only section 270.004 of the Local Government Code specifically refers to the federal government, the statutory authorizations of section 273.001 of the Local Government Code and of section 31.065(a) of the Natural Resources Code permit municipalities and the General Land Office respectively to receive donations of land without any restrictions as to the donor. Therefore, by necessary implication, these statutes permit the governmental entities to receive real property from the federal government. Care must, of course, be taken not to exceed the limits of these grants of authority.

**S U M M A R Y**

The State of Texas has the same right to acquire real or personal property as an individual, and may acquire real property by conveyance, will, or otherwise. Section 31.065(a) of the Natural Resources Code authorizes the General Land Office, by the commissioner, to accept gifts, devises, or bequests of real property. Such property becomes permanent school fund land unless otherwise specifically dedicated by the donor. Counties, by their commissioners courts, may acquire land located in the county from the federal government, under the authority of section 270.004 of the Local Government Code. Municipalities have authority to acquire real property under section 273.001 of the Local Government Code for certain enumerated public purposes.

Yours very truly,

Susan L. Garrison  
Assistant Attorney General  
Opinion Committee