



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

October 30, 1995

Honorable Frank H. Bass, Jr.
Montgomery County Attorney
Courthouse
Conroe, Texas 77301

Letter Opinion No. 95-066

Re: Whether a sale or lease of county airport real property is subject to the public auction requirements or the sealed bid or sealed proposal requirements of chapter 263 of the Local Government Code (ID# 30137)

Dear Mr. Bass:

You ask whether a sale or lease of county airport real property is subject to the public auction requirements or the sealed bid or sealed proposal requirements of chapter 263 of the Local Government Code. For the following reasons, we are of the opinion that the answer is yes.

The auction and bid-or-proposal requirements that you inquire about are found in sections 263.001 and 263.007 of the Local Government Code. Section 263.001(a) provides as follows:

(a) The commissioners court of a county, by an order entered in its minutes, may appoint a commissioner to sell or lease real property owned by the county. The sale or lease must be made at a public auction held in accordance with this section unless this chapter provides otherwise.

Subsection (b) of section 263.001 establishes certain notice requirements for the auction. Section 263.007(a) authorizes a county commissioners court to "adopt a procedure by which the county may sell or lease through a sealed-bid or sealed-proposal procedure any real property, including space in a building, owned by the county." Subsection (b) of section 263.007 contains various notice requirements for a sale or lease under that section. Subsection (c) requires the commissioners court to have the property appraised for fair market value and to determine a minimum bid based on that appraisal.¹

¹A new subsection (e), which was added (the former subsection (e) being renumbered as subsection (f)) by the Seventy-fourth Legislature, see Act of May 9, 1995, 74th Leg., R.S., ch. 145, 1995

You cite two other statutory provisions that may be relevant to your question: Local Government Code section 263.051 and former V.T.C.S. article 46d-3.² Section

(footnote continued)

Tex. Sess. Law Serv. 993, 994, provides that the bid-or-proposal requirements of section 263.007 and any other competitive bidding requirements otherwise required by law do not apply to a commissioners court's lease of

real property owned or controlled by the county that was formerly owned or controlled by the Texas Department of Mental Health and Mental Retardation to a federal, state, or local government entity for any purpose or to a nonprofit organization that is exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)), to conduct health and human service activities or such other activities which the commissioners court finds to be in the public interest

Id. § 1, at 993; *see id.* § 2 (act effective upon passage), at 994. We assume that your question does not contemplate a transaction to which subsection (e) would apply.

²You do not cite former V.T.C.S. article 1269h, section 1(E). That provision authorizes "the Commissioners Court of any county . . . to sell, convey or lease all or part of any airport or property connected therewith . . . to any person, firm or corporation." In Attorney General Opinion V-1162 this office considered section 1(E) in the context of the other provisions in article 1269h, as well as the legislative history of a 1947 statute that amended the section, *see* Act of May 7, 1947, 50th Leg., R.S., ch. 273, 1947 Tex. Gen. Laws 473, and concluded that a sale, conveyance, or lease to a "person, firm or corporation" under section 1(E) must be for a purpose relating to the maintenance and operation of an airport. Attorney General Opinion V-1162 (1951) at 3-4. This office concluded there that a county had no authority to lease airport land to a roping and polo association for rodeo purposes. *Id.* at 4. In Attorney General Opinion M-758 (1970), this office recognized that the statutory predecessor of code section 263.051 (V.T.C.S. art. 2351, *repealed by* Act of May 30, 1993, 73d Leg., R.S., ch. 1042, § 3, 1993 Tex. Gen. Laws 4458, 4458) authorized a county to lease airport land for purposes other than airport-related uses. The opinion overruled Attorney General Opinion V-1162 to the extent that that opinion "does not consider Article 2351 and deals alone with Article 1269h as if it were the only authority to lease airport land." Attorney General Opinion M-758 (1970) at 3, but reaffirmed that opinion's conclusion that section 1(E) of article 1269h authorizes a county to lease airport land only for airport-related purposes, *id.* at 2-3. We assume in this opinion that your question does not involve a sale or lease for airport-related purposes and that therefore article 1269h is inapplicable. Please be aware, however, that federal law also may apply to a county's sale of airport land for airport-related purposes. *See* 49 U.S.C. § 40103(e) (providing generally that "[a] person does not have an exclusive right to use an air navigation facility on which Government money has been expended"); Attorney General Opinion JM-569 (1986).

The Seventy-fourth Legislature has nonsubstantively recodified former article 1269h in sections 22.011, 22.014, 22.020 to 22.021, 22.024, and 22.051 to 22.054 of the Transportation Code. *See* Act of May 1, 1995, 74th Leg., R.S., ch. 165, sec. 1, §§ 22.011, .014, .020 - .021, .024, .051 - .054, sec. 24 (repealing V.T.C.S. art. 1269h), sec. 25 (legislative intent of no substantive change), 1995 Tex. Sess. Law Serv. 1025, 1047-51, 1870, 1871. The Transportation Code became effective on September 1, 1995. *Id.* § 27, at 1871.

263.051(a) authorizes a county commissioners court to "lease to any person any land acquired, by a purchase or gift, by the county for an airport and may lease any facilities on that land, unless the lease is prohibited by the terms of the grant of the land to the county." The Seventy-fourth Legislature has nonsubstantively recodified former article 46d-3 in section 22.024 of the Transportation Code. See Act of May 1, 1995, 74th Leg., R.S., ch. 165, sec. 1, § 22.024, sec. 24 (repealing V.T.C.S. art. 46d-3), sec. 25 (legislative intent of no substantive change), sec. 27 (Transportation Code effective on September 1, 1995), 1995 Tex. Sess. Law Serv. 1025, 1049-50, 1870, 1871. Section 22.024 provides as follows:

DISPOSAL OF AIRPORT PROPERTY BY LOCAL GOVERNMENT. (a) A local government may dispose of an airport or air navigation facility or other property, or a portion or interest in property, acquired under this chapter in any manner, *subject to the laws of this state* or provisions of the charter of the local government governing the disposition of other property of the local government.

(b) A local government may dispose of the property to another local government or an agency of the state or federal government for use for aeronautical purposes, notwithstanding Subsection (a), in the manner and on the terms the governing body of the local government considers to be in the best interest of the local government.

(c) An arrangement made under this section is subject to the terms of a grant, loan, or agreement under Section 22.055. [Emphasis added.]

See also *id.* § 22.001 (defining *local government* as "a county or municipality in this state" for purposes of chapter 22 of Transportation Code) (derived in part from V.T.C.S. art. 46d-1(a) - (c), (d) (part)) sec. 24 (repealing V.T.C.S. art. 46d-1), sec. 25 (legislative intent of no substantive change), 1995 Tex. Sess. Law Serv. 1025, 1046, 1870, 1871.

The emphasized language of section 22.024 negates any legislative intent to override any applicable auction or bid-or-proposal requirements under chapter 263 of the Local Government Code. Section 263.051, by comparison, is silent regarding how transactions under that section are to be conducted.³ We understand you to ask whether

³Various other provisions in chapter 263 also authorize a county to lease or sell real property without mention of auction or bid-or-proposal requirements. See Local Gov't Code §§ 263.052 (authority to lease or rent certain land, housing, or facilities acquired from United States), .053 (authority of county with population of more than 500,000 to "sell land, buildings, facilities or equipment for" certain purposes), .102 (authority to lease real property for "construction, ownership, maintenance, operation, or

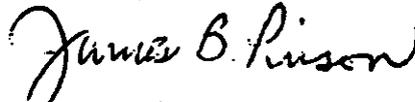
this silence could be construed as overriding any otherwise applicable auction or bid-or-proposal requirements in chapter 263.

Nothing in section 263.051 is inconsistent with the auction requirements of section 263.001 or the bid-or-proposal requirements of section 263.007. Furthermore, a lease of airport land or facilities under section 263.051 is a lease of real property under section 263.001 and may also be a lease of real property by a county-adopted sealed bid or sealed proposal procedure under section 263.007. We therefore conclude that the absence, in section 263.051, of any provision regarding auction or bidding does not override the express auction requirements of section 263.001 or, if applicable, the sealed bid or sealed proposal requirements of section 263.007. *But see* 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 9.23, at 310 (Texas Practice 1989) (stating, without citing authority, that additional statutes authorizing county to lease specific types of public property "generally do not require public auction or bid to lease such property").

S U M M A R Y

In selling or leasing its airport property under Local Government Code section 263.051 or Transportation Code section 22.024, a county commissioners court must comply with the public auction requirements of Code section 263.001 or, if applicable, the sealed bid or sealed proposal requirements of Local Government Code section 263.007.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

(footnote continued)

expansion of a privately owned hotel and related facilities that are operated in conjunction with an existing convention center owned by the county"), .106 (authority to sell land and appurtenant air rights if, among other conditions, "a hotel has been built on the land in conjunction with an existing convention center and the hotel has been operated continuously for at least five years from its inception"). We do not consider whether transactions under any of these other provisions are subject to auction or bid-or-proposal requirements. *See also id.* § 263.002 (authority to sell or lease unneeded abandoned seawall or highway right-of-way property to certain persons or entities according to set priority or, as last priority, "at public auction in accordance with Section 263.001").