



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1997

Mr. Kenneth H. Ashworth
Commissioner
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711

Letter Opinion No. LO97-076

Re: Whether a community college may sell or lease land to a private foundation for the construction of a community or civic center (ID# 39585)

Dear Commissioner Ashworth:

You have asked this office, on behalf of the president of Weatherford College, a series of questions regarding the sale or lease of land owned by the college to a private foundation. Because we neither find facts nor interpret contracts in the opinion process, our reply to the questions presented must be general in nature, and does not constitute a review or approval of any particular transaction.

As we understand the background for Weatherford College's questions, the college wishes to sell or lease a parcel of its land to a private foundation for the construction of a community civic center. We assume that the foundation is to own and operate the center. At any rate, we have not been asked, and do not consider, whether the college would have the authority to own or operate such an enterprise.

Weatherford College has first asked, in effect, whether the land it wishes to sell is "county school land," and therefore exempt from the bidding requirements of chapter 272 of the Local Government Code. Under the terms of article VII, section 6 of the Texas Constitution,

All lands heretofore, or hereafter *granted* to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county. . . . (Emphasis added.)

You suggest that, if the land in question is county school land, the county may dispose of it as it sees fit. We need not decide whether that is the case, because article VII, section 6 does not apply here. By its terms, the land at issue in article VII, section 6 is "[a]ll lands heretofore, or hereafter granted to the several counties." The land about which Weatherford College inquires, we

are given to understand, was purchased by the college in 1966. Accordingly, it is not school land within the terms of the constitutional provision.

A brief submitted with this request suggests that despite the fact that the land “was not obtained through the typical grant process initiated by the state legislature in the nineteenth century, the status of ‘school land’ nevertheless should apply.” The brief, however, presents no authority for this novel proposition. Absent judicial authority, we decline to read article VII, section 6’s language so expansively. If the land in question was indeed purchased by Weatherford College in 1966, it is not school land for the purposes of article VII, section 6 of the Texas Constitution.

Given that the land in question is not school land for the purposes of article VII, section 6, the question arises how it may be sold or transferred. The land is owned by Weatherford College, which is, we are informed, “[o]rganized under the Parker County Junior College District.” Junior college districts are political subdivisions of the State of Texas. Attorney General Opinion M-707 (1970) at 3.

Sale or lease of property by political subdivisions is governed by chapter 272 of the Local Government Code.¹ Generally such sales require notice to the general public of the offer of the land by publication in a newspaper of general circulation, and the submission of sealed bids. Local Gov’t Code § 272.001(a). Under subsection (b) of Local Government Code section 272.001, the notice and bidding requirements do not apply in a variety of listed situations. In those exceptional situations, section 272.001(b) requires that the land or property interests “may not be conveyed, sold, or exchanged for less than the fair market value of the land or interest unless the conveyance, sale or exchange is with one or more abutting property owners who own the underlying fee simple.” Fair market value, in a case like this, would be determined by an appraisal which would be conclusive. *Id.* § 272.001(b).

You have asked whether the proposed transaction here may fall within the fourth of these exceptions, “land that the political subdivision wants to have developed by contract with an independent foundation.” *Id.* § 272.001(b)(4). Again, we cannot judge the facts concerning a particular transaction in an advisory opinion. We note, however, that the law applicable in such a case was interpreted by this office in Attorney General Opinion MW-46. In that opinion, we considered whether, under the predecessor statute to Local Government Code section 272.001(b), a city might sell land at fair market value “to a private, nonprofit neighborhood-oriented corporation so that low cost housing may be constructed thereon through this corporation for resale, at cost, to low income citizens.’ No actual development of the land for a particular purpose would be required by the contract of sale.” Attorney General Opinion MW-46 (1979) at 1.

¹You do not ask, and we do not consider, whether Education Code section 45.082 or other similar provision may be applicable in this context. *See Educ. Code § 130.084 (board of trustees of junior college district governed by general law governing independent school districts to extent applicable).*

Attorney General Opinion MW-46 construed the language of the bidding exception strictly to require the contract of sale to include the city's specifications for the land's development. "[T]he exception operates only so long as the foundation agrees, under the contract of sale, to develop the land as the city may determine." *Id.* at 2.

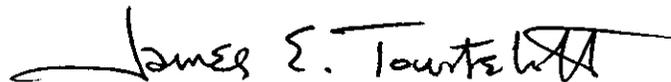
In our view, the reasoning of Attorney General Opinion MW-46 remains sound. Moreover, the language of the statutory exception has remained in this regard essentially unchanged over the last eighteen years. Accordingly, any contract of sale under the terms of Local Government Code section 272.001(b)(4) between a political subdivision and a private foundation for the development of a parcel of public land owned by the political subdivision must include an undertaking that the foundation will develop the land as the political subdivision determines.

The final question presented to us is, "Does it make any difference if the college intends to purchase the property back in the future?" As we have noted, we cannot interpret particular contractual arrangements, nor can we speculate on the implications of such arrangements, particularly in the absence of more detailed information. Accordingly, we cannot answer this question.

S U M M A R Y

Land acquired by a community college by purchase is not school land for the purposes of article VII, section 6 of the Texas Constitution. Such land may be sold or leased to a private foundation pursuant to Local Government Code section 272.001(b)(4) only if the use determined by the political subdivision is a condition of the lease or contract of sale.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee