



## Office of the Attorney General

State of Texas

February 12, 1998

DAN MORALES

ATTORNEY GENERAL

The Honorable Joe F. Grubbs  
Ellis County and District Attorney  
Ellis County Courthouse  
Waxahachie, Texas 75165-3759

Letter Opinion No. 98-003

Re: Whether Natural Resources Code section 31.309  
applies to certain Ellis County land sales (RQ-1031)

Dear Mr. Grubbs:

You ask whether Natural Resources Code section 31.309, which grants a purchasing preference, applies to certain Ellis County land sales. Based on its plain language as well as its legislative history, we conclude that this provision applies only to sales of land by the General Land Office ("GLO") and does not apply to Ellis County land sales.

Section 31.309, a provision of Natural Resources Code chapter 31, subchapter G recently enacted by the Seventy-fifth Legislature to deal with lands purchased for the now-defunct superconducting super collider ("SSC") project,<sup>1</sup> provides in pertinent part as follows:

A person or the person's heirs who conveyed land to the state for use by the superconducting super collider research facility has a preference right to purchase the same tract of land previously conveyed before the tract is offered for sale by the state to any other person.

Nat. Res. Code § 31.309(a). A person who has a preference right under this provision "must pay at least the fair market value for the land as determined by an appraisal conducted by the land office." *Id.* § 31.309(b).

You explain that the State of Texas purchased land for the SSC project and then conveyed a portion of the land to the United States Department of Energy. After the federal government abandoned the SSC project, Ellis County made claims against the United States. In settling the claims, the United States Department of Energy transferred to Ellis County "a portion of the real property . . . purchased by the State of Texas and conveyed by Texas to the United States." You ask whether Natural Resources Code section 31.309 applies to the sale of that land by Ellis County. For the following reasons, we conclude it does not.

You suggest that there is some question whether the term "state" in section 31.309 embraces Ellis County. The term "state" in Natural Resources Code chapter 31 is generally defined to mean

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<sup>1</sup>Act of May 13, 1997, 75th Leg., R.S., ch. 345, § 3, 1997 Tex. Sess. Law Serv. 1473, 1474 (S.B. 728) (effective Jan. 1, 1998).

“the State of Texas.” *Id.* § 31.001(1). Chapter 31 establishes the authority of the GLO and governs the management of state-owned land. By contrast, various chapters in the Local Government Code govern county authority over county-owned land, including the authority to sell land.<sup>2</sup> Nothing in subchapter G indicates that section 31.309 is intended to apply to county land sales.

In addition, we have reviewed the legislative history of section 31.309, which was enacted in the last legislative session as part of Senate Bill 728, and believe it indicates that section 31.309 is intended to apply only to the sale of SCC land by the GLO. A committee report provides the following background to the bill:

After the SSC was awarded to Texas, [the Texas National Research Laboratory Commission (NRLC)] began acquiring surface and subsurface acreage for construction and maintenance of the SSC tunnel and related facilities. The U.S. government has terminated the SSC project. NRLC will cease to exist on or before September 1, 1997. . . . This bill would authorize the commissioner of GLO to deal with the status, control over, and disposition of state property relating to the SCC research facility. Additionally, this bill would transfer certain authority vested in NLRC to GLO.

House Comm. on Land and Resource Management, Bill Analysis, C.S.S.B. 728, 75th Leg., R.S. (1997). It describes the overall purpose of Senate Bill 728 as follows:

[Senate Bill] 728 authorizes the commissioner of the [GLO] to deal with the status, control over, and disposition of state property relating to the [SSC] research facility. Additionally, this bill transfers authority of the [NRLC] relating to the control, marketing, and disposing of real property and interests in real property relating to the [SSC] research facility to GLO.

*Id.*

We believe it is clear from these provisions that the legislature drafted Senate Bill 728 to transfer authority of state SSC land to the GLO and that Natural Resources Code section 31.309 applies only to such land. This conclusion is further supported by the Senate Bill 728 fiscal notes, which state that “[n]o significant fiscal implication to units of local government is anticipated. Sale of the SSC land could add revenue to local governments as the property would be added back to the local tax base.”<sup>3</sup> If section 31.309 were intended to apply to the sale of land by Ellis County, it seems probable that some fiscal implication would have been noted.

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<sup>2</sup>See, e.g., Local Gov’t Code chs. 263, 270-272.

<sup>3</sup>Fiscal Note, S.B. 728, 75th Leg. (1997) (dated May 1, 1997); see also Fiscal Notes, S.B. 728, 75th Leg. (1997) (dated April 3, 1997, April 5, 1997, April 25, 1997).

Finally, the Seventy-fifth Legislature passed another bill, House Bill 527,<sup>4</sup> specifically governing the sale of former SSC land by Ellis County. Recently enacted Local Government Code section 270.008 provides as follows:

(a) If the United States Department of Energy returns or gives to any county any property that was used or was to be used in connection with or by a superconducting super collider high-energy research facility, the county may sell, lease, or otherwise dispose of the property by a method determined by the commissioners court of the county.

(b) A commissioners court disposing of property under this section is not required to comply with any provision of this title, including Sections 263.001 and 272.001, requiring a public auction or bidding process for the disposal of property.

The legislative history of House Bill 527 makes it clear that this provision deals expressly with the land about which you inquire:

When the [SSC] project was canceled by the U.S. Congress, the U.S. Department of Energy titled parcels of land to various political subdivisions. The actual lab site was given to Ellis County in lieu of cash reimbursements. In order to liquidate such a limited use facility, the Ellis County commissioners court has requested that, in respect to dealing with the super collider property owned by Ellis County, the commissioners court be allowed to determine the method of disposal.

Senate Comm. on Finance, Bill Analysis, H.B. 527, 75th Leg., R.S. (1997). It also states that the purpose of the bill "allows property formerly used in conjunction with the [SSC] to be waived from the Local Government Code bidding process or public auction established for disposal of property." *Id.* Clearly, the legislature, in enacting House Bill 527, intended to give the Ellis County Commissioners Court latitude in disposing of land titled to the county by the United States Department of Energy. We believe that if the legislature had intended to require Ellis County to give preference to former land owners in selling such land, thus limiting the commissioners court's authority with respect to these sales, it would have made this intent plain in House Bill 527.

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<sup>4</sup>Act of May 5, 1997, 75th Leg., R.S., ch. 92, § 1, 1997 Tex. Sess. Law Serv. 178, 179 (effective May 15, 1997).

S U M M A R Y

Natural Resources Code section 31.309 does not apply to the sale of former superconducting super collider land transferred to Ellis County by the United States Department of Energy.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter". The signature is written in black ink and is positioned above the typed name.

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee