



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 30, 1998

The Honorable John W. Smith
Ector County District Attorney
300 North Grant Street
Odessa, Texas 79761

Letter Opinion No. 98-057

Re: Authority of county to enter into coliseum
concession contract which allows extension of
lease term and transfer of lease to another entity
(RQ-1050)

Dear Mr. Smith:

Your inquiry concerns a concession contract¹ agreed to in 1994 by the commissioners court of Ector County and Leisure Foods, the concessionaire. The contract required Leisure Foods to sell food, beverages, and other items at the Ector County Coliseum and to operate a wardrobe checking service. Leisure Foods was assigned the use of certain coliseum premises, including "concession stands, [v]endor stations, storage areas, office space, kitchen, and portable units where available."²

The commissioners court subsequently extended the term of the contract, and Leisure Foods sold the contract to another concessionaire, who began selling beer and wine in the coliseum.³ A member of the commissioners court expressed concern about the extension of the contract term, the change in beverage sales, and the fact that the contract was sold without putting it up for bids. You wish to know whether these changes could be made without putting the contract up for competitive bids.

The contract itself authorizes these changes.⁴ The extension clause states as follows:

This Contract may be extended by the mutual consent of the parties for
an additional five-year period upon the same terms and conditions. The

¹Concession Contract between County of Ector and Leisure Foods, Inc. (June 1, 1994).

²Concession Contract, § 4, I. A., at 7. The contract provided that the "assigned premises and all buildings, structures, fixtures, improvements, and equipment therein and thereon shall be operated and maintained by Concessionaire for the use and benefit of the public in a manner satisfactory to the County." *Id.*

³These changes were made in connection with an agreement for a professional hockey team to play at the coliseum.

⁴Since we do not construe contracts in the opinion process, we will assume that these provisions correctly state the intent of the parties. Attorney General Opinions JM-697 (1987) at 6, DM-192 (1992) at 10.

County may withhold its consent only if the Concessionaire has failed to comply with the terms and conditions of this Contract. Concessionaire shall give written notice at least ninety (90) days prior to the expiration of the five (5) year original term of the Contract to County that he intends to exercise said option.⁵

The contract also provides that the concessionaire “shall not assign, transfer, convey or otherwise dispose of this concession” without the previous written consent of the county.⁶ If the concessionaire should “assign, transfer, convey or otherwise dispose of its right, title or interest or any part thereof in violation of this section, the Concessionaire shall be declared in default.”⁷ Finally, the concessionaire agrees to provide the coliseum concessions with refreshments and beverages according to a menu attached as Exhibit B. The menu includes beer and wine, among other beverages. Therefore, the issue raised by this request is whether the commissioners court could agree to include these provisions in the contract when it entered into it in 1994.

Chapter 263 of the Local Government Code includes general procedures for the sale or lease of county land. Pursuant to section 263.001, the commissioners court may sell or lease real property at a public auction, while section 263.007 of the Local Government Code permits the commissioners court to adopt a procedure whereby the county might sell or lease real property, including space in a building, through a sealed-bid or sealed-proposal procedure. Before selling property under section 263.007, the commissioners court must obtain an appraisal of the property’s fair market value and determine a minimum bid based on the appraisal.⁸

However, when another statute authorizes the county to lease a specific kind of real property, the provisions of chapter 263 do not apply.⁹ Chapter 319 of the Local Government Code expressly allows the commissioners court to enter into a coliseum concession contract. This chapter relates generally to buildings to be used for “annual exhibits of horticultural, agricultural, livestock, mineral and other products that are of interest to the community.” Section 319.004 authorizes the commissioners court of a county to “contract for the complete management of, and for the conducting, maintenance, use, and operation of, buildings, improvements, and exhibits” authorized by chapter 319 or by article 2372d-2, V.T.C.S., which authorizes the commissioners court to acquire “a coliseum and auditorium.” Thus, a commissioners court may contract for the management, maintenance, use, and operation of a coliseum pursuant to section 319.004. This section of the Local Government Code also provides as follows:

⁵Concession Contract, § 1, at 1.

⁶*Id.* § 11, at 14.

⁷*Id.*

⁸Local Gov’t Code § 263.007(c).

⁹Attorney General Opinions DM-131 (1992), JM-1232 (1990), JM-1197 (1990), JM-335 (1985).

(b) The commissioners court may lease the buildings, improvements, or exhibits.

(c) A contract or lease made under this section must be evidenced by an order of the commissioners court and entered in the minutes of the court.

(d) The commissioners court may permit the use of a building, improvement, or exhibit for any public purpose the court determines to be of benefit to the county and its residents.¹⁰

The county is not required to competitively bid a contract entered into pursuant to section 319.004.¹¹

We conclude that the sale of alcoholic beverages in the coliseum, the extension of the contract term, and the assignment of the contract were authorized by the contract. Accordingly, these changes could be implemented without putting the contract up for competitive bids.

We understand that the contract as approved in 1994 allowed the concessionaire to sell beer and wine in the coliseum. Thus, the addition of wine and beer to items sold in the coliseum did not reflect any change in the contract terms. This office has already determined that a commissioners court may lease property with an option to extend the lease for a reasonable term.¹² In our opinion, the commissioners court may also agree to a reasonable assignment clause in a contract, as long as it is consistent with applicable statutes and constitutional provisions. Section 91.005 of the Property Code provides that, “[d]uring the term of a lease, the tenant may not rent the leasehold to any other person without the prior consent of the landlord.” This provision applies to leases of public lands.¹³ The commissioners court is not required to seek bids on a coliseum concession contract. Accordingly, it may agree to a provision allowing assignment of the contract to another entity without bidding.¹⁴

¹⁰The county must also receive adequate consideration under the contract to avoid violating article III, section 52 of the Texas Constitution, which prohibits political subdivisions from granting public funds to any individual, association, or corporation. *See* Attorney General Opinion H-520 (1975) at 2.

¹¹*See* Attorney General Opinion H-520 (1975).

¹²Attorney General Opinions JM-1043 (1989), H-1025 (1977).

¹³*Francis v. Crowley*, 50 S.W.2d 462 (Tex. Civ. App.--El Paso 1932, writ ref'd) (lease of university lands).

¹⁴*See* Attorney General Opinion JM-531 (1986) (discussing assignment of school board lease to school trustee).

S U M M A R Y

The commissioners court of Ector County may enter into a coliseum concession contract pursuant to section 319.004 of the Local Government Code without seeking competitive bids, and may include in the contract provisions authorizing the lessee to assign the lease and to extend the term of the lease, subject to the consent of the commissioners court. The option to extend and the assignment could be exercised without putting the lease contract up for competitive bids.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee