THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

Overruled by H-483

September 17, 1965

Honorable James N. Ludlum
Commissioner
Texas Aeronautics Commission
[illegible] West Sixteenth Street
Austin, Texas

Opinion No. C- 511

Re: Whether the Texas Aeronautics Commission is authorized to loan or grant funds for the purpose of construction, repair or improvement of airports on leased land.

Dear Sir:

You have requested an opinion concerning whether the Texas Aeronautics Commission may loan or grant funds for the purpose of construction, repair or improvement of airports on leased land, and if so, under what conditions, if any. You point out that the Texas Aeronautics Commission has been authorized under H.B. 12 and H.B. 43 of the 59th Legislature to loan or grant money to Texas communities for the construction, repair or improvement of airports.

H.B. 43 (Acts 59th Leg., 1965, Ch. 196, p. 397) amends Article 46c-6, Vernon's Texas Civil Statutes, by adding a new subdivision to read as follows:

> "Subdivision 10. When in the discretion of the Commission the public interest will best be served; and the governmental function of the State or its political subdivisions relative to aeronautics will best be discharged, it may grant or loan funds, appropriated to it for that purpose by the Legislature, to any incorporated city, town or village in this State for the establishment, construction, reconstruction, enlargement or repair of airports, airstrips or air navigational facilities.

> Provided that any such funds must be expended by the city, town or village for the purpose provided herein and in conformity with the laws of this State and with the rules and regulations which the Commission is hereby authorized to promulgate."

The Subdivision further provides that the Commission, before approving such grant or loan, shall require, among other things, that "(1) The airport or facility remain in the control of the political subdivision or political subdivisions involved for at least twenty (20) years, . . ." (Emphasis added)

The general appropriation bill (H.B. 12, Acts 59th Leg. 1965) appropriated funds for such purposes.

Obviously, Subdivision 10 contemplates that the land upon which these installations are to be made shall be owned by the municipality or leased by it for a minimum of twenty years.

The basic question which must be answered in connection with these statutes is whether the use of public funds for the improvement of privately owned land (which is merely leased to the municipality) constitutes a grant of public funds or credit within the meaning of Sections 50, 51 or 52 of Article III or Section 6 of Article XVI of the Constitution of Texas. The pertinent portions of these constitutional provisions are as follows:

> "Sec. 50. The Legislature shall have no power to give or lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever."

> "Sec. 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any

> individual, association of individuals, municipal or other corporations whatsoever; . . ."
>
> "Sec. 52. The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, . . ."
>
> "Sec. 6. No appropriation for private or individual purposes shall be made. . . ."

The question whether Sections 50 and 51 of Article III absolutely prohibit the granting of State funds to municipal corporations gives us no trouble because it has been settled that said provisions do not bar the granting of state funds to municipal corporations for use in governmental purposes. Shelby County v. Allred, 123 Tex. 77, 68 S.W.2d 164 (1934). Furthermore, Article 46d-15, Vernon's Civil Statutes, a part of the Municipal Airport's act, states in part:

> "The acquisition of any land or interest therein pursuant to this Act, the . . . construction . . . maintenance . . . and policing of airports . . . are hereby declared to be public and governmental functions. . . ."

and in Attorney General's Opinion No. C-202, dated August 11, 1964, this office held that Section 51 of Article III of the Constitution of Texas would not be violated by the proposed amendment to Article 46c-6, Vernon's Civil Statutes, so as to authorize the grant of funds to incorporated cities for the construction of airports and navigational facilities. This opinion was based upon City of Corsicana v. Wren, 159 Tex. 202, 317 S.W.2d 516, 520 (1958), which sustained the constitutionality of Article 46d-15, quoted in part above, and held that the ownership and operation of an airport is a governmental function.

However, the above mentioned opinion and court decisions do not involve the question presented by your request; that is, the use of public funds for the improvement of privately owned land. It is clear that H.B. 43

quoted above contemplates the possible use of public funds to improve land belonging to individuals, associations or corporations other than municipal corporations. At the end of the twenty-year lease the improvements on the land will become the property of the owner of the fee. In our opinion, the term of the lease has nothing to do with the question of the authority of the State or municipality to use public funds to improve the land. The statutory provision now requiring a twenty-year lease may be amended at any time to require a one-year or a two-year lease. In any event, the question is the same.

The clear and unambiguous language in the above quoted constitutional provisions, in our opinion, renders invalid the above quoted statutory provisions to the extent that they authorize the expenditure of state or municipal funds to construct improvements on privately owned land, and, therefore, the Commission is not authorized to loan or grant State funds for such purposes.

If a municipality owns the fee title to the land, as distinguished from the mere leasehold interest in it, the prohibitions of the above quoted constitutional provisions would not apply.

S U M M A R Y

H.B. 43 (Acts 59th Leg., 1965, Ch. 196, p. 397) and H.B. 12 (The General Appropriation Bill, Acts 59th Leg.) are unconstitutional to the extent that they provide for the grant of public money and to the extent that they appropriate public money to improve leased land, and, therefore, the Texas Aeronautics Commission is not authorized to loan or grant funds for the purpose of construction, repair or improvement of airports on leased land.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

RALPH R. WASH
Assistant Attorney General

RRR:nr

APPROVED BY:

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. WRIGHT