



TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

Shirley J. Neeley, Ed.D.
Commissioner

November 8, 2004

The Honorable Greg Abbott
Attorney General of Texas
Price Daniel Building
P.O. Box 12548
Austin, Texas 78711

RECEIVED

NOV 12 2004

OPINION COMMITTEE

RQ-0292-GA

FILE # ML-44014-04
I.D. # 44014

ATTENTION: Opinion Committee

Re: Request for Opinion regarding long-term property exchange

Dear General Cornyn:

At the request of Port Neches-Groves I.S.D. ("PNG"), I am seeking your opinion regarding a proposed transaction between PNG and a private party involving a long-term exchange of real property owned by the respective properties. I am enclosing correspondence from the school district superintendent describing the proposed transaction and presenting certain legal questions regarding the transaction.

Thank you for your consideration of the questions presented. Your guidance will be valuable to school districts throughout the state considering innovative solutions to their needs for property on which to build new facilities. If you have any questions, please contact David Anderson, General Counsel, at 463-9720.

Sincerely,


Shirley J. Neeley

Cc: Dr. Lani Randall
Superintendent, Port Neches-Grove I.S.D.

"Good, Better, Best—never let it rest—until your good is better—and your better is BEST!"



**PORT NECHES-GROVES
INDEPENDENT SCHOOL DISTRICT**

620 Avenue C
Port Neches, Texas 77651
(409) 722-4244, Ext. 22 FAX (409) 724-7864
E-mail Irandall@esc5.net

RECEIVED
NOV -4 AM 11:00
LEGAL SERVICES

Office of Superintendent
Dr. Lani Randall

ENTERED

November 2, 2004

The Texas Education Agency
Attention: David A. Anderson, General Counsel
1701 N. Congress Avenue
Austin, Texas, 78701

Dear Mr. Anderson:

I am Superintendent of the Port Neches-Groves Independent School District ("PNG") and have encountered an issue upon which the Texas Education Agency may be of assistance. PNG has been presented with a rare and unique opportunity, which would allow it to obtain an interest in a valuable piece of land, without any significant cost and certainly far below fair market value. The proposed transaction involves a tract of land owned by Huntsman Petrochemicals, who has agreed to lease the land to PNG for a term of 50 years, with an option to renew the lease for an additional 50 years, at the sole discretion of PNG's School Board, in exchange for the consideration of \$1.00 per year and the use of a tract of unused excess land owned by PNG. Essentially, the proposed transaction involves a long-term property exchange between the two parties.

The land owned by Huntsman is considered ideal for the possible construction of new schools and is almost twice the total acreage of land owned by PNG that would be involved in the proposed transaction. Huntsman wants the use of PNG's excess tract for the operation of the local community soccer league that would be displaced when it leases the larger tract to PNG. This unique proposal raises a question that PNG must resolve:

- 1) **Whether Port Neches-Groves Independent School District can construct buildings using public funds upon property that is owned by Huntsman Petrochemicals and that is leased rather than owned and as partial consideration for such lease, provide a tract of PNG's excess and unused land to Huntsman Petrochemicals for the use as a community youth soccer program without bid or other public approval.**

With regard to this question, counsel for PNG located a request in 1998 from the Texas Higher Education Coordinating Board to the Honorable Dan Morales, Attorney General of Texas, wherein the Dallas Community College District wished to provide land through a long-term lease for the construction of a public school facility by the local school district. Unfortunately, this request for an opinion was withdrawn from the Attorney General's Office prior to an opinion being issued. PNG's counsel has advised that the Attorney General has yet to issue an opinion that involves the exact factual circumstances that I have set forth in this letter.

Although there is no opinion directly on point, PNG's counsel has advised that the law appears to be that a school district does have the ability to issue bonds to construct a building on leased

premises. Op. Tex. Att'y Gen. No. H-403 (1974) held that a governmental entity could construct a facility on leased land if the expenditure was for a proper public purpose and in exchange for adequate public benefits. This opinion dealt with the Texas Department of Agriculture and did not specifically deal with an independent school district's ability to undertake such construction. However, in 1981, under Op. Tex. Att'y Gen. No. M-290, the Attorney General's Office went further and indicated that Harris County could expend proceeds from the sale of bonds to improve property that was leased by it. This opinion further reinforces the proposition that the use of public funds for the construction of improvements upon leased land is appropriate, so long as the school can show a proper public purpose and furtherance of the educational needs of the district. While neither of these opinions is directly on point, they appear to be illustrative and provide guidance on the issue. Also, it is important to note that the 100 year term of the proposed lease will certainly exceed the useful life of any structures that will be constructed using the public funds.

With regard to the land currently owned by PNG, PNG's counsel advises that there are two Texas reported cases that discuss the general authority of a school district to dispose of school property under a lease with a third party. In Royce ISD vs. Reinhardt, 159 S.W. 1010 (Tex.Civ.App.-Dallas 1913, writ ref'd) the Court analogized a school's use of its baseball fields by a local booster club during the summer to that of a municipal corporation that had the authority to permit its buildings to be used for other purposes, when they were not being used by the City. Further, in River Road Neighborhood Ass'n vs. South Texas Sports, 720 S.W.2d 551 (Tex.-San Antonio 1986, writ dismiss'd), the Courts recognized clearly that a school district has authority to enter into lease agreements. However, these agreements cannot prohibit the school district from taking back the property if such is needed by the district. Thus, the tenant cannot be granted the exclusive use of the property. The Court determined that prohibiting the school district's use of the property was an invalid exercise of the school district's authority, because it abrogated the power of the district to control its property for school purposes.

This matter is different than those above, as the property to be provided is being provided as consideration for the use of a more valuable and more useful tract. Accordingly, if PNG retained the right to terminate the use of the land by Huntsman, then it could destroy the consideration being paid to Huntsman for the use by PNG of the larger and more valuable tract. The PNG School Board feels that this proposed transaction is in the best interest of the school district and I would very much appreciate you responding to this matter. Further, if the Texas Education Agency has no defined operating procedure or policy regarding this property exchange, I would like to request that you obtain an opinion from the Attorney General on this matter.

I would like to thank you for taking the time to address this matter. If you have any questions or concerns please feel free to contact me.

Sincerely,

Dr. Lani Randall

Dr. Lani Randall
Superintendent

cc:

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Baytown, Texas 77521

Mr. Chris Booth
Mehaffy Weber
P. O. Box 16
Beaumont, Texas 77704