



0-4042

**OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN**

**GERALD C. MANN  
ATTORNEY GENERAL**

Honorable R. L. Armstrong  
County Auditor, Tom Green County  
San Angelo, Texas

Dear Sir:

Opinion No. 0-4042  
Re: Authority of county to  
establish and maintain  
county parks.

Your request for an opinion of this department reads  
in part:

"The Commissioners' Court of Tom Green County has recently levied a tax under Article 6078, Revised Civil Statutes of the State of Texas, and shall shortly begin a program of improving certain tracts of land acquired for the purpose of county parks. In connection with such improvements, there has been some discussion as to the authority of the Commissioners' Court to subdivide certain tracts of county parks and to erect cabins and cottages on such lots for the accomodation of vacationists or tourists, the rentals from such property to acerue to the credit of the county park fund. It has also been suggested that certain lots might be sold to individuals desiring to construct summer cottages in the county park area. Some of the land now being used or contemplated to be used for park purposes is land leased by the county, these leases running from four to ten years.

"In an effort to advise the Commissioners' Court properly as to their authority regarding these expenditures, I wish to certify the following questions:

"Question No. 1. Does the county have authority, in connection with the improvement of county parks, to construct or purchase already constructed cabins

or cottages, and furnish, maintain, and operate such cabins and cottages for the purpose of renting or leasing the same to vacationists and tourists?

"Question No. 2. Does the county have authority to subdivide a county park and sell or lease lots to individuals for the purpose of erecting summer cottages?

"Question No. 3. Does the county have authority to expend county funds for park improvements to be erected on land not owned outright by the county, but held under a lease contract?"

Article 6078, Vernon's Annotated Civil Statutes, reads:

"Each Commissioners' Court is authorized to levy and collect a tax not to exceed five (5) cents on each one hundred dollars assessed valuation of the county for the purchase and improvement of lands for use as county parks. No such tax shall be levied and collected until the proposition is submitted to and ratified by the property taxpaying voters of the county at a general or special election called for that purpose, provided, a two-thirds majority of the property taxpaying voters of such county, at an election held for such purpose shall determine in favor of said tax. If said court desires to establish two or more of such county parks, they shall locate them in widely separated portions of the county. Said court shall have full power and control over any and all such parks and may levy and collect an annual tax sufficient in their judgment to properly maintain such parks and build and construct pavilions and such other buildings as they may deem necessary, lay out and open driveways and walks, pave the same or any part thereof, set out trees and shrubbery, construct ditches or lakes, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules and regulations as said court may prescribe.

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"Section 2. All parks acquired by authority of this Act shall be under the control and management of the county acquiring the same, provided that the Commissioners Court may by agreement with the State Parks Board turn the land over to the State Parks Board to be operated as a public park; the expense of the improvement and operation of such park to be paid by the county and/or cooperative Federal agencies according to the agreement to be made between such county and the State Parks Board."

We held in our Opinion No.0-905 that a county could build or purchase a baseball stadium to be used as a part of a county's park system.

We believe that portion of the above quoted article reading: "\* \* \* and build and construct pavilions and such other buildings as they may deem necessary \* \* \*" and "\* \* \* make such other improvements as they may deem proper \* \* \*" vests in the Commissioners' Court the authority to construct or purchase cabins and to operate the same as a part of the county park system. Your first question is answered in the affirmative.

Counties being component parts of the State, have no powers or duties except those clearly set forth and defined in the Constitution and statutes. The statutes of Texas have clearly defined powers, prescribed the duties and imposed the liabilities of the commissioners' court, the medium through which the different counties act, and from those statutes must come all the authority vested in the counties. Edwards County v. Jennings, 33 S. W. 585; affirmed, 35 S. W. 1053.

The above quoted statute furnishes no authority to the commissioners' court to subdivide a county park for the purpose of selling or leasing lots therein nor to expend county funds for park purposes on land not owned by the county. Your second and third questions are answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

*Graded Mann*

By *Lloyd Armstrong*  
Lloyd Armstrong  
Assistant

APPROVED  
OPINION  
COMMITTEE  
BY *AW*  
CHAIRMAN

LA:EP