



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. R. L. Thompson
County Auditor
Taylor County
Abilene, Texas

Dear Sir:

Opinion Number O-4775

Re: (1) Liability of City of Abilene for pro rata part of bonded indebtedness of common school district when city extends its limits to include part of territory of such district.
(2) Liability of City of Abilene for taxes on property within limits of school district purchased by city for airport purposes.

We are in receipt of your letter of recent date in which you submit the following inquiry:

"The City of Abilene has incorporated territory of a Consolidated Common School District which has an outstanding bonded indebtedness; and the City of Abilene has also purchased territory of this district which territory is not incorporated within city limits. The Mayor of Abilene questions the City's responsibility of assuming its pro rata part of the outstanding bonded indebtedness of said Common School District.

"Question 1. Is the City of Abilene liable for pro rata part of bonded indebtedness of Common School District which pro rata part is to be based upon valuation of entire district and territory detached as set by the equalization board of Taylor County?

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"Question 2. Should the City continue to pay taxes on this purchased territory which has not been incorporated?"

You have furnished us with further information in your letter of November 4, as follows:

"In reply to your letter of November 2, 1942 relative to further information concerning tracts of land which have been detached from Common School District 29 of Taylor County and incorporated by the City of Abilene having been purchased by the City of Abilene. The schools of Abilene are bounded by the limits of the City of Abilene. The taxes for running the schools are levied by the city and certain amounts are allocated to the schools.

"A portion of District 29 which was purchased by the City of Abilene has been incorporated within the City limits of Abilene and is a part of the Abilene School system. And a part of this purchase was not for school purposes and has not been incorporated within the City of Abilene. This last purchase was for the purpose of adding additional lands to the Airport near Abilene."

In answer to your question regarding the city's liability for its pro rata part of the bonded indebtedness of the common school district from which the territory was detached, we call your attention to Articles 2804 and 2805, Revised Civil Statutes, which read as follows:

"Art. 2804. Extending city limits to include district. - Whenever the limits of any incorporated city or town constituting an independent school district are so extended or enlarged as to embrace the whole or any part of any independent or common school district adjacent to such incorporated city or town, that portion of such adjacent district so embraced within the corporate

limits of such incorporated city or town shall thereafter become a part of the independent school district constituted by such incorporated city or town.

"If within the portion of such district so embraced there should be situated any real property belonging to such district, such city or town may acquire the same upon such terms as may be mutually agreed upon between the governing body of such city or town and the authorities of such district.

"This article shall not apply where it shall be determined at an election held within such city or town by majority vote of those voting thereon that the territory or any portion thereof to be so embraced shall not thereby become a part of the independent school district constituted by such city or town, but shall be taken into the city limits for municipal purposes only, and shall remain for school purposes a portion of the adjacent independent or common school district as though said city limits had not been extended. Acts 1st C.S. 1917, p. 35; Acts 2nd C.S. 1919, p. 101."

"Art. 2805. Municipality assuming indebtedness. - In all cases where a district is embraced within an incorporated city or town, as provided in the preceding article; and in all cases where any town or village has been or may be incorporated for free school purposes only and which shall include within the limits thereof any portion of any common school district which has an outstanding bonded indebtedness, then such city, town or village shall become liable and bound for the payment of such proportion of the bonded indebtedness of such district as the assessed value of the portion thereof so included bears to the entire assessed value of the district from which the

same was taken. The assessed values of the districts so included shall be those shown upon the last preceding county tax assessment roll after such districts are so included; such incorporated city, town or village shall pay either directly or through the officers of such district the proportion of the interest and principal of such bonded indebtedness for which it is liable. Id."

It seems clear from the above that the City of Abilene assumes its proportionate part of the bonded indebtedness of the Common School District. The city has the right to tax the annexed territory for school purposes. *Todd v. City of Houston*, 276 S.W. 419.

The answer to your second question, regarding the liability of the city for school taxes on the land purchased by the city to be added to the airport, depends upon whether or not the operation of an airport by a municipal corporation is a "public purpose".

The Constitution, Article 8, Section 2, authorizes the Legislature to exempt by general law public property used for public purposes.

We quote from the opinion of the Supreme Court in the case of *Galveston Wharf Co. v. Galveston*, 63 Tex., exact page 23, as follows: "It is property held only for purposes essentially public, and may be said to be devoted exclusively to the use and benefit of the public; indeed, it would be hard to imagine a use more essentially public than is that of a wharf which extends along the front of a city, and upon which is received a large part of the articles which go to make up the inward and outward commerce of the State. It is a property which all persons and vessels have the right to use under proper regulations, and without the use of which the business of the city could not be conducted. That compensation is received for its use does not withdraw from it its public character. *Dillon on Municipal Corporations*, 103-113."

The Supreme Court of Missouri, in passing on the question as to whether the acquisition, improvement and development of land for an airport is a public purpose

in the case of *Dysart v. City of St. Louis*, 11 S.W.(2d) 1045, used the following language: "An airport with its beacons, landing fields, runways and hangars is analogous to a harbor with its lights, wharves and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air. With respect to the public use which each subserves they are essentially of the same character." The same court in the same opinion made the following observation: "The question of whether the acquisition and control of a municipal airport is a public purpose within the purview of the constitutional principle heretofore adverted to is obviously a new one. The courts which have had occasion to consider it have, however, answered in the affirmative. *City of Wichita v. Clapp*, 125 Kan. 100, 104; *State ex rel City of Lincoln v. Johnson State Auditor*, 220 N.W. 273; *State ex rel Hile v. City of Cleveland et al.*, 160 N.E. 241; and no court of last resort, so far as we are advised, has ever held the contrary."

In the case of *City of Abilene v. State*, 113 S.W.(2d) 631, Judge Funderburk said: "It is, therefore, our view that when the facts of a given case establish the ownership of property by a municipal corporation, which has been acquired for an authorized public purpose, and the purpose for which it is owned and held has not been abandoned, such property is to be regarded as used for public purposes, and the Legislature has the power to provide by general law for its exemption from taxation."

We conclude from the foregoing authorities that the City of Abilene is not liable for taxes on the land purchased for an addition to its airport.

Very truly yours

APPROVED NOV 10, 1942

ATTORNEY GENERAL OF TEXAS

/s/ Grover Sellers

By /s/ C. F. Gibson
C. F. Gibson
Assistant

FIRST ASSISTANT
ATTORNEY GENERAL

CFG/s/am

APPROVED
OPINION
COMMITTEE
By /s/ B.W.B.
Chairman