



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable T. M. Trimble,  
First Assistant  
State Superintendent  
of Public Instruction  
Austin, Texas

Dear Sir:

Opinion No-0-5830

Re: Under the facts submitted, may the school trustees of Beaumont Independent School District sell property held in trust for public free school purposes for the purpose of investing in more convenient and desirable school property without breaching said trust?

We acknowledge receipt of your letter of recent date to which you attached a letter from Honorable W. A. Tatum, Attorney for the City of Beaumont and the Beaumont Independent School District, in which letter Mr. Tatum requested you to secure an opinion from the Attorney General on the following questions:

"Under Article 2773, Revised Civil Statutes of Texas, 1925, may the school trustees with the consent of the State Board sell property held in trust for public free school purposes for the purpose of investing in more convenient and desirable school property without breaching said trust, which property to be sold was acquired as follows:

"(a) By dedication where the owner designated in writing upon a properly recorded town-site or city addition plat or map certain property to be a school site or school square, which dedication was made

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"(1) Prior to the enactment of Article 2773, Revised Civil Statutes of 1925,

"(2) Subsequent to the enactment of Article 2773, Revised Civil Statutes of 1925;

"(b) By donation or grant for a valuable consideration by deed, said deed reciting that said property is donated or granted for public free school purposes only, which conveyance was consummated

"(1) Prior to the enactment of Article 2773, Revised Civil Statutes of 1925,

"(2) Subsequent to the enactment of Article 2773, Revised Civil Statutes of 1925;

"(c) By donation or grant for a valuable consideration by deed, said deed reciting that said property is donated or granted for public free school purposes only and that in the event said property is not used for school purposes, said property shall revert back to the vendors, their heirs or legal representatives, which conveyance was consummated

"(1) Prior to the enactment of Article 2773, Revised Civil Statutes of 1925,

"(2) Subsequent to the enactment of Article 2773, Revised Civil Statutes of 1925?

" In other words, the question about which the school board is concerned is whether or not Article 2773, Revised Civil Statutes of 1925, is valid and supersedes the legal effect of conveyances for public free school purposes to-wit: Covenants and conditions subsequent, where said conveyances were made (1) prior to the enactment of said Article, and (2) subsequent to the enactment of said Article. The school board does not wish to convey any school property contrary to civil law and thereby breach a covenant or condition subsequent."

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As stated in Opinion O-5082, "an opinion in a case of this kind depends entirely upon all the facts and circumstances surrounding the execution of the deeds," or upon the facts in connection with the donation or dedication of the lands for public free school purpose only, and therefore we shall not attempt to answer categorically the questions submitted, but will discuss them generally.

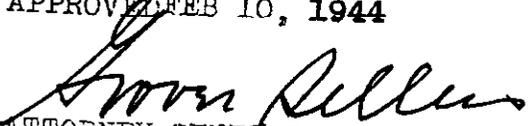
In our opinion, Article 2773, R. C.S. 1925 does not add anything to the title which a city or town has with respect to property held in trust for free school purposes only, but designates the agents by whom such cities and towns may sell property owned by such cities and towns. It does not attempt to supersede the legal effect of conveyance for free school purposes only, and any such deeds containing covenants and conditions subsequent are not affected by Article 2773, whether the deeds were made prior to or subsequent to the enactment of said Article. See *Swink v. City of Dallas* 36 S.W. (2) page 222; *Maddox v. Adair, et al*, 66 S. W. 511, error refused, *Hughes vs. Gladewater County Line Independent School District*, 76 S. W. (2) 471.

From the foregoing citations it will be seen that it is impossible to express an opinion covering all the different questions submitted by Mr. Tatum. The correct answer depends upon the nature of the title which the district has to the property which it proposes to convey. If it has a fee simple title, then under Article 2773, supra, it may convey fee simple title through the agents therein designated and for the purposes therein authorized. But if the title of the district is dependant upon continued use of the property by the district for school purposes, Article 2773 is inoperative to increase that title so as to enable the district to convey the property for other uses.

Yours very truly

APPROVED FEB 10, 1944

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By

  
 C. F. Gibson  
 Assistant

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