



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable A. E. Hickerson  
County Auditor  
Montgomery County  
Conroe, Texas

Dear Sir:

Opinion No. 0-6924

Re: Whether Montgomery County  
can lease the county air-  
port to the City of Conroe  
so that the City in turn  
can lease said airport to  
an individual firm.

We have received your request for our opinion on the  
hereinabove captioned matter, and we quote from your letter  
as follows:

"I am in receipt of Opinions Nos. 0-6878  
and 0-3865 in which you state that the Commis-  
sioners' Court of a county has no authority to  
lease an airport to any party except those set  
out in paragraph D of Section 1, Art. 1269h.

"The Commissioners' Court of Montgomery  
County is negotiating with a firm in Houston,  
Texas, whereby this firm will agree to lease  
the Montgomery County Airport and in considera-  
tion of this lease, this firm agrees to maintain  
the airport according to C. A. A. specifications  
and further, to bear all the operational costs.  
The Commissioners' Court of this county has been  
handed estimates ranging from \$20,000.00 to  
\$35,000.00 per year covering operational and  
maintenance costs of this airport. This is a  
burden which the county definitely does not feel  
that it can assume. Therefore, any contract  
whereby operational and maintenance costs might  
be entirely assumed by a lessee would enable this  
county to keep the airport open without expense.

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"Paragraph E, of Section 1, Art. 1269h, gives the governing bodies of incorporated cities certain powers to sell, convey or lease airports. In order to facilitate this matter, would it be possible for Montgomery County to execute a lease to the City of Conroe whereby the City in turn could execute a lease to an individual firm? Although this might appear to be accomplishing that indirectly which the county cannot accomplish directly under your opinions, it would enable the county to make a satisfactory disposition of its airport problems.

"In the event that you find this method invalid, kindly advise me as to whether or not there is any valid procedure which the county might follow in making a lease of its airport to an individual firm or corporation."

Article 1269h, Vernon's Annotated Civil Statutes, provides in part as follows:

"Section 1. A- That the governing body of any incorporated city in this State may receive through gift or dedication, and is hereby empowered to acquire, by purchase without condemnation or by purchase through condemnation proceedings, and thereafter maintain and operate as an airport, or lease, or sell, to the Federal Government, tracts of land either within or without the corporate limits of such city and within the county in which such city is situated, and the Commissioners' Court of any county may likewise acquire, maintain and operate for like purpose tracts of land within the limits of the county.

"B- That the governing body of any incorporated city in this State may receive through gift or dedication, and is hereby empowered to acquire by purchase without condemnation, and thereafter maintain and operate as an airport, or lease, or sell to the Federal Government, tracts of land without the county in which such city is situated, provided said tracts are not within five (5) miles of another incorporated city that has a population of more than fifteen hundred (1500) people, according to the last preceding Federal Census.

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"C- That the governing body of any incorporated city in this State may, and is hereby empowered, to acquire through condemnation proceedings, tracts of land located without the county in which said city is located, provided said tracts of land are within six (6) miles of the county boundary of the county in which said city is located, and are not within five (5) miles of another incorporated city having a population in excess of fifteen hundred (1500) people, according to the last preceding Federal Census; and that said city may thereafter maintain and operate as an airport, or lease, or sell, said tracts to the Federal Government; provided, however, that the grant herein made to acquire land through condemnation proceedings, without the county in which said city is located, shall expire on December 31, 1942, but that tracts of land acquired prior to that date, and under the authority of this Act, may continue to be operated, leased, or sold, as provided in this Act.

"D- In addition to the power herein granted, the Commissioners' Courts of the several counties of this State are hereby authorized to lease any airport that may be acquired by the county, as herein provided, to any incorporated city or municipality within such county, or to the Federal Government, for the purpose of maintaining and operating an airport; and provided further that any incorporated city having acquired land for an airport, or an airport, under the authority of this Act, shall have the right to lease said land or said airport to the county in which said incorporated city is located.

"E- In addition to the power which it may now have, the governing body of an incorporated city shall have the power to sell, convey, or lease, all or any portions of any airports heretofore established or that may be hereafter established, or any land acquired under the provisions of this Act, to the United States of America for any purpose deemed by the Government of the United States necessary for National Defense, or for air mail purposes, or any other public purpose, or to the State of Texas, or any branch of the State Government, or to any other person, firm or corporation, to carry out any purpose necessary or incidental to National Defense or training incidental thereto; and that such governing body shall provide rules and regulations for the proper use of any such airports in connection with the purposes stated herein."

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The courts of Texas have repeatedly held that county commissioners' courts may exercise only such authority as is conferred upon them by the Constitution and statutes of this State, either by express terms or by implication. There are many authorities to this effect, and we cite the following:

Article 5, Section 18, Texas Constitution;  
 Article 2351, Revised Civil Statutes of Texas;  
 Texas Jurisprudence, Vol. 11, pages 563-566;  
 Bland v. Orr, 39 S. W. 558;  
 Nunn-Warren Publishing Company v. Hutchinson County,  
 45 S. W. (2d) 651;  
 Hogg v. Campbell, 48 S. W. (2d) 515;  
 Landman v. State, 97 S. W. (2d) 264;  
 El Paso County v. Elam, 106 S. W. (2d) 2791;  
 Dobson v. Marshall, 118 S. W. (2d) 621;  
 Mills County v. Lampasas County, 40 S. W. 404.

Our Opinion No. O-6878 reads in part as follows:

"In answer to your first question we refer you to our Opinion No. O-3865, a copy of which is herewith enclosed, wherein it states: 'It is our opinion that the Commissioners' Court has no authority to lease an airport to any party except those set out in paragraph D of Section 1, Article 1269h.' Thus, the Commissioners' Court can only lease an airport to 'any incorporated city or municipality within such county or the Federal Government.' It is, therefore, the opinion of this department that the Commissioners' Court cannot lease a county owned airport to an individual."

(Also see Opinion No. O-3865, a copy of which has already been mailed to you).

Both of the above opinions held that the Commissioners' Court could not lease a county owned airport to an individual. If the Commissioners' Court of Montgomery County were to lease the county airport to the City of Conroe so that the City in turn could lease said airport to an individual firm, said Commissioners' Court would be doing something indirectly that they could not do directly. It is an elementary and fundamental principle of law that a Commissioners' Court cannot do anything indirectly that they cannot do directly.

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In view of the foregoing, your question is answered in the negative. You are also advised that we do not know of a valid procedure which the county might follow in making a lease of its airport to an individual firm or corporation.

This opinion is not to be construed as passing on the authority of the governing body of a city to sell or lease a city airport. The provisions of Article 4399, V. A. C. S., prohibit us from passing on such a question.

We trust that we have satisfactorily answered your inquiry.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

BY

*J. C. Davis, Jr.*  
J. C. Davis, Jr.  
Assistant

JCD:LJ

APPROVED NOV 7 1945  
FIRST ASSISTANT  
ATTORNEY GENERAL

