



**THE ATTORNEY GENERAL  
OF TEXAS**

GROVER SELLERS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable J. M. Williams  
County Auditor  
Tarrant County  
Fort Worth, Texas

Dear Sir:

Opinion No. 0-7032

Re: Authority of Tarrant County to  
lease certain buildings and  
hangers on an airport and re-  
lated questions

Your letter of March 14, 1946 contains the fol-  
lowing facts:

"Recently there has been a tentative offer by the Federal Government to Tarrant County of the Naval Air Base Training Station at Eagle Mountain Lake, in Tarrant County. This tentative offer consists in an offer on the part of the Federal Government to turn this air field over to Tarrant County conditioned upon the County's maintaining said air field or airport and with the further proviso that the Federal Government reserves the right at all times to use said airport to the extent of twenty-five per cent of its capacity should it desire to do so and reserves the further right to again assume control of said airport in the event of a National emergency which would require the Federal Government to use the airport for defensive purposes as has heretofore been used.

"The Commissioners Court does not desire to incur any expense by reason of its taking over said air base and a private individual has offered to lease the airport from Tarrant County and to assume the burden of maintaining said airport in the condition in which it will be when turned over to Tarrant County by the Federal Government. It appears from Section 1 of Article 1269h that the Commissioners Court of any County has authority to receive by gift or dedication and to thereafter maintain and operate an airport, and under subdivision (d) of Section 1 of said Article 1269h, it is provided that the county is authorized to lease any airport which may be acquired by the County to any incorporated city or municipality within said county or to the

Federal Government for the purpose of maintaining and operating an airport."

Your letter of recent date requesting the opinion of this department is based on the foregoing facts. We quote from said request as follows:

"On March 14, we asked you for a ruling on counties securing Federal Naval Air Base Training Station at Eagle Mountain Lake, Tarrant County. On March 15, we received copies of your opinions 0-6924, 0-6878 and 0-3865.

"Conditions have arisen that we are unable to determine by your opinions; could counties lease buildings and hangers or a part of the buildings and hangers, and also leasing a part of the farm land on this 2,400 acre tract, or would it be necessary for the county to operate this under their complete supervision?

"We would also like to know if it would be necessary to finance this through our General Fund, and if a profit was made, could the profit from this Air Port be applied to General Fund Expenditures of the County, or would it be necessary to set up an Air Port Fund?"

Article 1269h, Vernon's Annotated Civil Statutes is 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.

"\*\*\*\*\*

"D-In addition to the power herein granted, the Commissioners' Court 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 incor-

porated 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.

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"Sec. 3. Any airport acquired under and by virtue of the terms of this Act shall be under the management and control of the governing body of the city or the Commissioners' Court of the county acquiring the same, which is hereby expressly authorized and empowered to improve, maintain and conduct the same as an airport, and for that purpose to make and provide therein all necessary or fit improvements and facilities and to fix reasonable charges for the use thereof as such governing body or Commissioners' Court shall deem fit, and to make rules and regulations governing the use thereof. All proceeds from such charges shall be devoted exclusively to the maintenance, upkeep, improvement and operation of such airport and the facilities, structures, and improvements therein. . ."

We infer from the above quoted parts of your letters that the Federal Government has proposed "to turn this airport over to Tarrant County" conditioned upon the county's maintaining and operating said airfield or airport, subject to certain reservations. If the County so contracts with the Federal Government, it is our opinion that the County could not use the property or any portion thereof for any purpose other than airport purposes. See Moore v. Gordon (dismissed) 122 S.W. 2d 239, 243. Since the County would be obligated to maintain and operate said airfield or airport, it necessarily follows that the Commissioners' Court would be without authority to lease the whole or any part of said airfield or airport. On the other hand, should the contract permit the County to lease said airfield or airport, the Commissioners' court would be bound by the provisions of Article 1269h, and could only lease the same "to any incorporated city or municipality within such County, or to the Federal Government, for the purposes of maintaining and operating an airport" and for no other purpose.

As to your second question concerning the use of any profit made by the county through the operation of the

airport, we call special attention to the underlined portion of Section 3 of Article 1269h supra. In order "to devote exclusively to the maintenance, upkeep, improvement and operation of such airport and the facilities, structures, and improvements therein" all the proceeds derived from charges for the use of said airport, it becomes necessary to set up an Airport Fund. However, if it is necessary to use any tax money in the operation of said airport, such expenditures should be paid out of the General Fund. If it is necessary to use tax money to make permanent improvements to the airport, such expenditures should be paid out of the Permanent Improvement Fund. We are sending you a copy of our Opinion No. 0-6762 which fully discusses this matter.

Trusting we have satisfactorily answered your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/J.C. Davis, Jr.  
J.C. Davis, Jr.  
Assistant

JR:djm:wc

By s/John Reeves  
John Reeves

APPROVED MAY 23, 1946  
s/Grover Sellers  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman