



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

May 3, 1949

Hon. K. L. Berry
Adjutant General
Austin, Texas

Opinion No. V-820

Re: The ownership of certain land conveyed to Company "F", 111th Engineer Regiment, 36th Division, Texas National Guard, by the City of Houston, following reorganization of said unit.

Dear Sir:

Your letter of April 7, 1949, submits a copy of a deed dated in 1938 from the City of Houston to Company "F", 111th Engineer Regiment, 36th Division, Texas National Guard. The deed recites that:

"It is the intent and purpose of this conveyance to vest a full and complete fee simple title to the above described land in said Company 'F' and to remove certain conditions, covenants and limitations contained in a deed heretofore executed by the said City of Houston to the said Company 'F'."

The deed contains certain covenants undertaken by Company "F" as a part of the consideration.

You state that the 36th Division has been reorganized, and that the unit formerly known as Company "F" is to be redesignated Battery "B", 47th FA Battalion (obn). You ask:

". . . the opinion of your office regarding the legality of the ownership of the property described in the attached deed. It is the interpretation of this office that the unit of the Texas National Guard designated as the successor of Company "F", 111th Engineer Regiment, 36th Division Texas National Guard, inherits the traditions and historical

continuity, as well as properties which may have been originally owned by Company "F". . . .

"Your opinion is necessary to enable this Department to proceed with plans for the construction of an armory on the property. . . ."

The copy of the deed furnished does not show its execution. We do not have a copy of the ordinance of the City Council of Houston which the deed recites as authority, nor do we have an abstract of title to the property. We are unable, therefore, to pass upon the title conveyed by the deed. Since we do not know the facts as to the performance by Company "F" of the covenants recited as part of the consideration, we cannot pass on the present status of the title conveyed.

Based upon the assumptions of good title in the City at the time of the deed, no failure of consideration, and no conveyance or encumbrance by Company "F" prior to its dissolution, it is our opinion that the property belongs to the State and is subject to control by law.

Subsequent to the execution of the instant deed, the Legislature passed Art. 5885, V.C.S., in its present form. This statute is the only authority for donations of land by cities to the National Guard. See *Armory Board v. McCraw*, 132 Tex. 613, 126 S.W.2d 627, 638 (1939). The article applies to conveyances before and after its effective date. It provides that the council of each city or town in this State is authorized:

". . . to donate, either in fee simple or otherwise to the Texas National Guard Armory Board, or to any one or more of said units for conveyance to said Board, one or more tracts of land as sites upon which to construct Armories and other buildings suitable for use by such units; and any and all such donations heretofore made . . . to any such administrative unit, either as a corporation or otherwise, and conveyed or to be conveyed to said Board, is hereby validated." Art. 5885, V.C.S.

The same Legislature amended the National Guard Armory Board Act, Acts 1939, 46th Leg. p. 487, to provide that the Texas National Guard Armory Board shall ". . . have charge of the acquisition, construction, rental, control, maintenance and operation of all Texas National Guard Armories. . . .", and that ". . . as and when any of the property owned by the Board shall be fully paid for . . . the Board shall donate, transfer and convey such property, by appropriate instruments of transfer and conveyance, to the State of Texas. . . ." Article 5890b, V.C.S.

In view of the nature of the State militia as a governmental agency (36 Am. Jur.216), we think that the intent, purpose and effect of the foregoing Acts is to vest title to the instant property in the State of Texas, subject to control by the appropriate agency. *Walsh v. University of Texas*, 169 S.W.2d993 (Tex. Civ. App. 1942, err.ref.); see Opinion of Attorney General of Texas No. V-46 (1947). This is the rule in other jurisdictions under similar National Guard laws. See 29 Opinions of Attorney General of North Carolina 646 (1947); 1946 Opinions of Attorney General of Illinois 134, 136; 47 Opinions of Attorney General of Alabama 172 (1947); 1945-1946 Opinions of Attorney General of Maine 26; 1947-1948 Opinions of Attorney General of Nebraska 665. It is common practice in Texas and elsewhere for local agencies of government to acquire titles for the State, either in their name or in the name of the State. *Robbins v. Limestone County*, 114 Tex.345, 268 S.W. 915 (1925); Articles 6673b and 6674n, V.C.S.; see Opinion of Attorney General of Nebraska, *supra*.

Even if we be mistaken that the State took legal title under the deed, it is certain that the property in question was held by Company "F" for public purposes. *Scott v. Logan*, 122 Tex.636, 64 S.W.2d 141 (1933). The members of the defunct company therefore have no private title therein. 40 C.J. 705; 57 C.J.S.1109. Since Company "F", prior to its dissolution, did not exercise what powers of disposition it might have had under Articles 5784 and 5797, R.C.S., we think that the property may be used for armory purposes by such unit as may be designated by property authority. Article 5781, R.C.S.; Articles 5790 and 5890b, V.C.S.

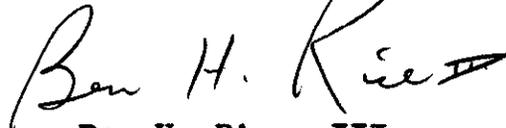
In order to simplify the matter, it might be well for the Texas National Guard Armory Board to take a deed from the City of Houston.

SUMMARY

Property conveyed by a city in 1938 to a unit of the Texas National Guard no longer in existence because of reorganization of the 36th Division may be used for armory purposes by such unit as may be designated by proper authority. Article 5781, R.C.S.; Articles 5790, 5885 and 5890b, V.C.S.

Yours very truly

ATTORNEY GENERAL OF TEXAS



By Ben H. Rice, III
Assistant

BHR:bt

APPROVED



ATTORNEY GENERAL