



THE ATTORNEY GENERAL
OF TEXAS

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December 5, 1968

Modified
11-19-68

Honorable Robert S. Calvert
Comptroller of Public Accounts
State of Texas
State Capitol Building
Austin, Texas 78711

Opinion No. M-310

Re: Whether property of
the Housing Authority
of the City of Harlingen
would be subject
to ad valorem taxes in
view of the fact that
a small portion of
said property will be
let to concessionaires
who would operate the
facilities to serve
the residents.

Dear Mr. Calvert:

You recently requested the opinion of this department on
the following question:

"Whether any part of a five story hotel
purchased by the Housing Authority of the
City of Harlingen to be utilized as low income
housing for the elderly, would be subject to
ad valorem taxes, if a small portion of the
lower floor of such hotel be let to concession-
aires who would operate facilities to serve the
residents."

The Housing Authority of the City of Harlingen is
authorized by Article 1269k of Vernon's Civil Statutes.
Section 22 of said Article provides:

"The property of an authority is declared
to be public property used for essential public
and governmental purposes and such property
and an authority shall be exempt from all taxes
and special assessments of the city, the county,

the State or any political subdivision thereof; provided, however, that in lieu of such taxes or special assessments, an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services, and facilities furnished by such city, county, or political subdivision for the benefit of a housing project, but in no event shall such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished."

In Attorney General Opinion No. O-1921 (1940), the Attorney General's Department ruled that the statutory exemption given in Section 22 of Article 1269k, supra, was a constitutional exercise of power by the legislature. In conclusion this opinion provided:

"In our opinion, Section 22 of Article 1269k, Vernon's Annotated Civil Statutes, commonly known and cited as the 'Housing Authorities Law' is a constitutional exemption from taxation, and property owned by the Housing Authority of Brownsville, Texas, duly created under said Act as a public body corporate and politic, and an agency or instrumentality of the State of Texas, under its police power, is 'public property used for public purposes,' entitled to exemption from State and County ad valorem taxes under said 'Housing Authorities Law' and controlling constitutional provisions."

The controlling constitutional provision referred to in that opinion is Article VIII, Section 2, Constitution of Texas, which provides, in part:

". . . the Legislature may, by general laws, exempt from taxation public property used for public purposes. . ."

Although the result reached in that opinion is still correct, the Supreme Court of Texas in City of Beaumont v.

Fertitta, 415 S.W.2d 902 (Tex.Sup. 1967), has held that Article VIII, Section 2, supra, did not apply to publicly owned property, and accordingly Attorney General Opinion No. O-1921 (1940) is modified to the extent of such holding and any conflict with this opinion. Regarding lands owned by the City of Beaumont, the Court stated at page 909:

Respondents . . . contend that since this property is public property not used for public purposes the Legislature is prohibited from exempting it from taxation by Article VIII, Section 2, of the Constitution. While property owned by cities is public property, it is not the type of public property to which Article VIII, Section 2 is applicable . . ."

In the course of its opinion, the Court reaffirmed its holding in Daugherty v. Thompson, 71 Tex. 192, 9 S.W. 99, wherein it defined what was meant by the words "public property used for public purposes as used in Article VIII, Section 2, in these words:

"That section of the constitution seems to apply to property owned by persons or corporations in private right, but which, from the use to which it is applied, is, in a qualified sense, deemed public property.

This construction does not allow any application of said provision to property of a Housing Authority. Furthermore, the Court in City of Beaumont v. Fertitta, supra, held in effect, that publicly owned property was not required to be taxed by the Constitution:

"It can be readily seen that the only property required to be taxed by the Constitution is private property held by natural persons or private corporations." (Emphasis ours.)

Since publicly owned property is not required to be taxed, the Legislature may tax or choose not to tax such property. By exempting the property of Housing Authorities in Section 22, of Article 1269k, the Legislature has clearly chosen not to tax such property. City of Beaumont v. Fertitta, supra.

This opinion does not purport to pass on any question of whether taxes can be lawfully assessed against the leasehold interest of a lessee of the Housing Authority, as where the property is held under a lease for a term of three years or more under the provisions of Article 7173, Vernon's Civil Statutes. See City of Beaumont v. Fertitta, supra, holding that a tax on the leasehold was assessable not against the City but against its lessees.

S U M M A R Y

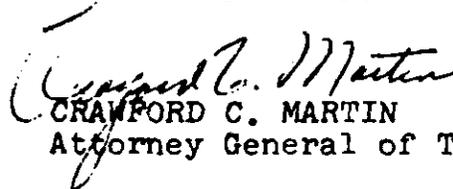
There is no constitutional prohibition against a complete exemption from taxation of property of a Housing Authority and such an exemption is clearly given in Article 1269k, Section 22, Vernon's Civil Statutes. The Legislature in said exemption chose not to tax the property of a Housing Authority; therefore, the property of the Housing Authority of the City of Harlingen is not taxable, even though a portion of the property is let to concessionaires operating the facilities to serve the residents. Attorney General Opinion No. 0-1921 (1940) is modified to the extent that Article VIII, Section 2 of the Constitution of Texas does not apply to publicly owned property, as determined in City of Beaumont v. Fertitta, 415 S.W.2d 902 (Tex.Sup. 1967). This opinion does not pass on the taxability of leasehold interests of lessees of the Housing Authority and arising under a lease for a term of three

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years or more pursuant to the provisions
of Article 7173, Vernon's Civil Statutes.

Yours very truly,


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APPROVED:

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