



**THE ATTORNEY GENERAL
OF TEXAS**

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November 26, 1969

Hon. F. T. Graham
Criminal District Attorney
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Brownsville, Texas

Opinion No. M-524

Re: Construction of H.B. 87,
Acts 61st Leg., R.S. 1969,
Ch. 455, p. 1512, concerning
sale of real estate owned
by political subdivisions.

Dear Mr. Graham:

In your letter requesting an opinion from this office,
you submit certain facts which we quote, in part, as follows:

"We desire your opinion as to what effect,
if any, the above cited House Bill No. 87 will
have upon Articles 1577 and 7345b, Section 9,
Vernon's Annotated Civil Statutes of the State
of Texas.

". . .

"It is noticed that the codifier has styled
House Bill No. 87 as 'Public Lands Sale by
Political Subdivisions-Publication of Notices'
and has by foot note No. 53 indicated that
House Bill No. 87 when ultimately codified
will be an amendment to Article 5421c, Sec-
tion 12 of Vernon's Annotated Civil Statutes of
the State of Texas. However, nowhere in the
caption of House Bill No. 87 and in the body of
the House Bill is there any reference to public
land, or lands, out of the public domain.

"Article 1577, Vernon's Annotated Civil
Statutes of the State of Texas, sets out the
procedure by which the Commissioners' Court may
appoint a commissioner to sell and dispose of
any real estate of the county at public auction;
and Article 7345b, Section 9, of said Vernon's
Statutes provides the procedure for disposing
of property purchased by the taxing unit as
trustee.

"Article 7345b, Section 9, provides, in part, that the taxing unit previously purchaser of property at a tax sale may dispose of said property at any time in any manner determined to be most advantageous to said taxing unit, or units, either at public or private sale."

With regard to these facts, you ask the following questions:

"We should appreciate your opinion as to whether or not the above cited House Bill No. 87 is a general bill, and as such does it repeal Article 1577, and Section 9 of Article 7345b, Vernon's Civil Statutes of the State of Texas?

"We also are concerned as to how the codifier classified House Bill No. 87 as an amendment to Article 5421c, Section 12 of Vernon's Annotated Civil Statutes of the State of Texas."

House Bill 87, Acts 61st Legislature, Regular Session, chapter 455, page 1512, effective June 10, 1969, provides, in part, as follows:

"Section 1. No land owned by a political subdivision of the State of Texas may be sold without first publishing in a newspaper of general circulation in the county where the land is located or in an adjoining county, if there is no such newspaper, a notice that the land is to be offered for sale to the general public, its description, its location and the procedures under which sealed bids to purchase the land may be submitted. Notice shall be so given at least on two separate occasions and no sale shall be held less than 14 days after the last notice.

"Sec. 2. Land owned by a political subdivision that wishes to contract with an independent foundation for the development of that land need not be offered for sale on public bid nor sold to the highest bidder.

"Sec. 3. Nothing in this Act shall require the governing body of any such political

subdivision to accept any bid or be required to consummate any sale.

". . ."

Article 1577, Vernon's Civil Statutes, and Article 7345b, Section 9, Vernon's Civil Statutes, are each special laws which detail the procedure for the sale and disposal of land owned by political subdivisions of the State named therein. House Bill 87 (Article 5421c-12) is a general law which pertains to the sale of land by all political subdivisions of the State. In answer to your first question, you are advised that it is well settled that special legislation is not repealed by a later general act unless specifically mentioned in the general law or such purpose was made manifest from the plain provisions of the general law. Paul v. State, 106 S.W. 448 (Tex.Civ.App. 1907, error ref.), Art. 7345b, Sec. 13, V.C.S. It is noted in this respect that H.B. 87 contains no repealing clause nor is such a purpose made manifest in the provisions of the bill. Consequently, it is our opinion that H.B. 87 in no manner repeals Article 1577 or Article 7345b, Section 9, Vernon's Civil Statutes.

This does not mean, however, that H.B. 87 has no effect. It is a well established rule that when a general intention is expressed and also a particular intention which is incompatible with the general one, the particular intention which is incompatible with the general one shall be considered an exception to the general and in such cases, full effect may be given to the general rule beyond the scope of the local or special law and by allowing the latter to operate according to its special purposes and aims the two acts can stand together. Paul v. State, supra.

Moreover, in this regard, it was held in the case of Gabbert v. City of Brownwood, 176 S.W.2d 344 (Tex.Civ.App. 1943, error ref.), that when a statute makes a general provision for all cases such as for all highways in all counties and a special provision for a particular class such as highways in cities and towns, the latter prevails insofar as the particular class is concerned. This is so whether the general and special statutory provisions are contained in the same act or different acts. Trinity Universal Co. v. McLaughlin, 373 S.W.2d 66 (Tex.Civ.App. 1963, rehearing denied 374 S.W.2d 350, no writ).

Therefore, on the basis of the foregoing authorities, it is our opinion that H.B. 87 is operable outside the scope

Hon. F. T. Graham, page 4 (M-524)

of Article 1577, Vernon's Civil Statutes, and Article 7345b, Section 9, Vernon's Civil Statutes.

The constitutionality of Section 2 of H.B. 87 is not before us, and therefore we do not express any opinion on same.

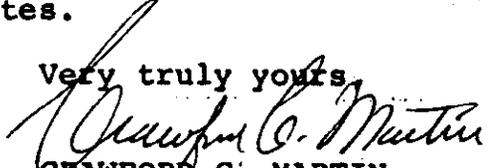
In answer to your second question, you are advised that H.B. 87 will be codified as a new Article 5421c-12, rather than an amendment to Article 5421c.

S U M M A R Y

H.B. 87 is a general law but does not in any manner repeal Article 1577 or Article 7345b, Section 9, Vernon's Civil Statutes. H.B. 87 is operable outside the scope of Article 1577, Vernon's Civil Statutes, and Article 7345b, Section 9, Vernon's Civil Statutes.

H.B. 87 will be codified as a new Article 5421c-12 rather than an amendment to Article 5421c, Vernon's Civil Statutes.

Very truly yours,


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