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ID# 11555
SG

The Honorable Dan Morales
Attorney General
Supreme Court Building
P.O. Box 12548
Austin, Texas 78701

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Opinion Committee

Dear General Morales:

The Potter-Randall County Appraisal District has requested that I seek an opinion from your office concerning the question of tax exemptions for certain parcels of public property located in Potter County and leased to private entities by the governmental unit.

The Texas Constitution provides that all real property shall be taxed according to its value unless such property is exempt. TEX.CON.S. art. VIII, Sec. 1(b). An exemption is provided for real property owned by cities and towns and held only for public purposes, and all other property devoted exclusively to the use and benefit of the public. TEX.CON.S. art. XI, Sec. 9. The statutory version of this exemption appears in the Tax Code, which states:

Except as provided by Subsections (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes. VERNON'S TAX CODE ANN. Sec. 11.11(a) (Vernon 1982).

On the other hand, the same section goes on to say that:

Property owned by the state that is not used for public purposes is taxable. Property owned by a state agency or institution is not used for public purposes if the property is rented for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state agency or institution or used to provide private residential housing for compensation to members of the public

other than students and employees of the state agency or institution owning the property, unless the residential use is secondary to its use by an education institution primarily for instructional purposes. VERNON'S TAX CODE ANN. Sec. 11.11 (d) (Vernon 1982).

In each situation, described below the revenues from the lease are being used for public purposes. The fact that compensation is received from the lessee does not necessarily eliminate the exemption. Op. Att'y Gen'l No. JM-464 (1986); Op. Att'y Gen'l No. MW-430 (1982). On the other hand, the fact that compensation from the lease is received and used for the benefit of the public is not enough alone to justify the exemption. City of Beaumont v. Fertitta, 415 S.W.2d 902 (Tex. 1967). As the statutes and constitutional provisions require, the critical inquiry is whether a "public purpose" is being made of the property. Op. Att'y. Gen'l No. MW-430 (1982). "Public purpose" does not require that the governmental unit itself use the property, but requires that the property be used exclusively for the health, comfort, and/or welfare of the public. Op. Att'y Gen'l No. JM-464 (1986); Op. Att'y Gen'l No. JM-405 (1985). Therefore, the fact that public property is leased does not mean that the property loses its exemption. Finally, even if the property qualifies for an exemption, in certain situations the legislature has provided for payment of taxes by the lessee. VERNON'S TAX CODE ANN. Sec. 25.07 (Vernon 1982).

Here are the facts and our particular questions:

1) The City of Amarillo is constructing an airplane hangar at the Amarillo International Airport, which is owned by the City, to be leased to a private entity as a facility for the repair, maintenance, and storage of aircraft. Most of these aircraft will be brought to the hangar solely for the purpose of repair and maintenance and will not be engaged in the transport of passengers or cargo to and from the airport. This project was initiated by the Amarillo Economic Development Corporation, a non-profit corporation established by the city pursuant to art. 5190.6, Sec. 4A, V.A.T.S. (Vernon Supp. 1991) to further the economic development of the city.

QUESTION: A) Is the property located at the airport but dedicated to a commercial purpose exempt from taxation to the City of Amarillo?

B) If the answer to this is "yes", is the leasehold exempt from taxation to the lessee pursuant to Section 25.07, Tax Code?

DISCUSSION: The answer to both questions appears to be "yes". Section 25.07 (b) of the Tax Code might exempt the lessee from taxation if the property is exempt to the owner. In order to be exempt, it must be shown that the land at the airport to be used for the hangar is being used for a "public purpose." There is some

QUESTION: Does the phrase "other than municipal" in TEX.CONS. art VIII, Sec 1(b) provide a "back door" exemption for all properties owned by a municipal corporation?

DISCUSSION: We understand the answer to this question to be "No." The purpose of this constitutional provision is to state what property the Legislature is required to tax. City of Beaumont v. Fertitta. The Legislature has not previously chosen to exempt all city property, whether or not used for public purposes, from taxation. VERNON'S ANN. TEX. CIV. STATS. ANN art 7150, Sec 4 (Vernone 1960), repealed. In addition to the City of Beaumont case, we are aware of at least one other case dealing with the absolute exemption of city property. Canutillo Independent School District v. City of El Paso, 514 S.W.2d 466 (C.C.A. - El Paso 1974, ref. n.r.e.). Now, however by the enactment of Sec. 11.11(a), Tax Code, the exemption for city property extends only to property used for public purposes.

3) The Amarillo Independent School District purchased a complex of four separate office buildings, and plans to devote one of such buildings to the administrative offices of the school district. The remaining three buildings will be leased to other governmental agencies and to private entities. An independent school district is a political subdivision of the state. Op.Att'y Gen'l M-707 (1970).

4) The Amarillo Junior College District is purchasing residences adjoining the campus with the intent of using the property in the future for expansion and parking. In the interim, the residences are being rented to private individuals for use as residences.

A junior college district is a unit of state government. Southwestern Broadcasting Co. v. Oil Center Broadcasting Co., 210 S.W.2d 230 (C.C.A. - El Paso, 1947, writ ref'd n.r.e.).

QUESTION: Are the properties described in situations 3 & 4 exempt from taxation?

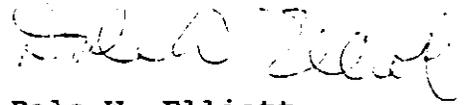
DISCUSSION: We believe the answer to this question is "No". Since both entities described in 3 and 4 are units of state government, Section 11.11 (d), Tax Code is applicable. We understand that provision to contain a statutory definition of "public purpose". As long as a lease is to a private business or individual for a purpose unrelated to the function of the government entity, the property is not exempt from taxation.

QUESTION: If the property in situations 2, 3, and 4 has been obtained with an eye to future use by the government entity for the public benefit, is the property currently being used for the public benefit by generating revenue?

DISCUSSION: Our answer is "no". As discussed above, the mere receipt of revenue does not establish a "public purpose". In addition, public use must be exclusive. Based on these principles, there is no exemption for property that has a potential public purpose.

We appreciate your assistance in this matter.

Sincerely,



Dale W. Elliott
County Attorney

DWE/dk

cc: Mr. E. D. Brauchi
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