



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

April 26, 1951

Hon. Larry O. Cox
Executive Director
Board for Texas State Hospitals
and Special Schools
Austin, Texas

Opinion No. V-1170

Re: Authority of the Board to
place permanent improve-
ments upon land held by the
State subject to mineral re-
servation and conditions
subsequent.

Dear Sir:

Your request for opinion reads in part as
follows:

"The State of Texas, acting by
and through the State Board of Control
while it was administering the State
hospital system, acquired title to sev-
eral pieces of real estate which were
conveyed to the State of Texas with re-
strictions as to use. One tract of land
which was conveyed to the State was Camp
Fannin, which consists of 2,369 acres
of land. At the present time this Board
maintains and operates a tuberculosis
sanatorium on the property. On July 28,
1948, the War Assets Administrator con-
veyed by deed, without warranty, to the
State of Texas the 2,369 acres of land.
The deed contained the following con-
ditions subsequent:

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- "1. The Federal Government retained all mineral rights.
- "2. That for a period of twenty-five years from the date of the instrument the State will not resell or lease the property without first obtaining the written approval of the War Assets Administration.
- "3. During national emergencies the Federal Government is entitled to full unrestricted use, control and possession of the property, or any part thereof, including additions or improvements made by the State of Texas.
- "4. The property is to be used for a tuberculosis hospital and sanatorium, and no other purpose, for a period of twenty-five years.

" . . .

"We have a very similar situation existing at the Weaver H. Baker Memorial Tuberculosis Sanatorium at Mission, Texas. This installation was once Moore Air Field, and the grantors of the real property were the cities of Edinburg, Mission and McAllen. The date of the deed is November 5, 1947. The mineral rights are retained by the grantors, and the conditions subsequent are exactly the same except that they expire at the end of a ten year period instead of a twenty-five year period.

"In addition to the two above mentioned installations, this Board is operating

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and maintaining the Victory Air Field at Vernon, Texas. There is only one restriction in the deed to the Vernon property. This property was conveyed to the State of Texas by the City of Vernon so long as the property is used for a public State purpose."

After making the foregoing statement, you request our opinion as to whether your Board has authority to place permanent improvements on tracts of land which have been conveyed to the State subject to the reservations and conditions subsequent described in your letter.

The authority of a State agency to acquire real estate, the title to which necessarily vests in the State, is dependent upon the will of the State expressed through its legislature. The authorizing legislation involved here is set forth in Senate Bill 147, Acts 50th Leg., 1947, ch.44, p.58 (Art.3251a,V.C.S.) which provides:

"Section 1. The State Board of Control is hereby authorized to negotiate for and to acquire from the United States Government, or any agency thereof, or from any source whatsoever, by gift, purchase, or lease-hold, for and on behalf of the State of Texas, for use in the state eleemosynary service, and in the establishment of state tuberculosis sanatoriums, any lands, buildings, and facilities within the State of Texas, and any personal properties wherever located, and to take title thereto for and in the name of the State of Texas.

"Sec.2. The fact that the State of Texas can acquire surplus property, both real and personal, from the United States Government, and its several agencies, and can acquire such property by gift from patriotic and public spirited cities, counties, and individual citizens, and can acquire such properties by purchase at nominal

cost, for use in the state eleemosynary service to the great improvement of public health and the advancement of public education, and can, by acquiring such property establish greatly needed tuberculosis sanatoriums, and the fact that tuberculosis is a communicable and infectious disease prevalent in South Texas and in East Texas, constituting a menace to the general health and welfare of all the people of the state, creates an emergency. . .

The East Texas State Tuberculosis Sanatorium occupies the Camp Fannin property and was created by Acts 50th Leg., 1947, ch.344, sec.16, p.679 (Art.3254d, V.C.S.). This Act was amended by Acts 51st Leg., R.S. 1949, ch.207, p.389, but the only change was to eliminate the restriction of sanatorium use to white persons. The Act of the 50th Legislature provides:

"There is hereby created the 'East Texas State Tuberculosis Sanatorium' for tubercular white persons. As the Board of Control is able to secure sufficient buildings and equipment to establish such tuberculosis sanatorium, the said Board is hereby authorized and directed to recondition and re-model same as may be necessary to establish a Sanatorium for white persons only, to be known and designated as the 'East Texas State Tuberculosis Sanatorium'."

The Weaver H. Baker Memorial Tuberculosis Sanatorium occupies Moore Field and was created by Acts 50th Leg., 1947, ch.330, p.607, wherein it is provided:

"There is hereby appropriated for the fiscal year ending August 31, 1948, the sum of Five Hundred Fifty Thousand (\$550,000.00) Dollars for the conversion and securing of title to Moore Field

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near Mission, Texas, in accordance with Senate Bill No. 147, Acts of Regular Session, 50th Legislature, 1947, and establishing the Weaver H. Baker Memorial Tuberculosis Sanatorium. In the event Moore Field cannot be secured the Board of Control shall have authority to establish said Sanatorium at such other place as the Board of Control may direct. For the fiscal year ending August 31, 1949 the unexpended balance of Five Hundred Fifty Thousand (\$550,000.00) Dollars is reappropriated for conversion. For the fiscal year ending August 31, 1948, there is appropriated the sum of Three Hundred Ten Thousand (\$310,000.00) Dollars to the Weaver H. Baker Memorial Tuberculosis Sanatorium for salaries, operation, support, maintenance, general improvements, repairs and contingent expenses. For the fiscal year ending August 31, 1949, there is appropriated Six Hundred Thousand (\$600,000.00) Dollars for salaries, operation, support, maintenance, general improvements, repairs and contingent expenses. . . ."

The Victory Air Field was accepted by the 51st Legislature (Acts 51st Leg., R.S.1949,ch.553,sec.25, p. 1085) under this language:

"The Board is hereby authorized to accept from the City of Vernon the buildings and land formerly used as an air field for the establishment of a State Hospital."

The nature or extent of the title to be acquired by a State agency is dependent upon the intention of the Legislature. If the authorizing Act provides for the acquisition of "full fee simple title", or "good and merchantable title", or uses

other language which may tend to show a particular intent with respect to the type of title to be acquired, then title should be acquired accordingly. The authorizing legislation here simply states that the Board is authorized to "negotiate for" and acquire "by gift, purchase, or leasehold, . . . any lands, buildings, and facilities . . . and to take title thereto for and in the name of the State of Texas." The emergency clause is predicated in part upon the fact that the State "can acquire surplus property, both real and personal, from the United States . . ." at a nominal cost. The provisions of this Act are quite broad and, to our minds, have the effect of delegating to the Board the authority to negotiate for, and within its discretion acquire, the best title obtainable. We call attention to the fact that the Act anticipated acquisition of surplus properties from the United States at a time when the Federal Government was making all conveyances of these properties subject to the same reservations and conditions as those set forth in the deeds to the State. Doubtless, the Legislature had knowledge of this practice and drew the Act as broad as it did with this in mind.

In an opinion by this office dated February 19, 1936, addressed to Hon. T. O. Walton, President of A. & M. College (Att'y Gen. Ops., Book 370, p.319), it is stated:

" . . . Insofar as acquisition by sale is concerned, the Legislature, insofar as this writer has been able to discover, has never made any specific regulation. The Legislature has merely provided that the Board of Directors shall have the power to purchase land. The only restriction being that the conveyances shall be approved by the Attorney General as to form. From a study of the foregoing articles, the legislative intention to leave the manner of acquiring lands, including the matter of mineral reservation by the grantor within the broad discretion of the

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Board of Directors is quite clear to the writer. Therefore, it is the opinion of this writer, and you are accordingly advised that the Board of Directors of the Agricultural & Mechanical College of Texas does have the legal authority to acquire lands for use as experimental stations with a mineral reservation to the grantor. However, it is suggested that the Board should exercise its discretion in this matter with a view to the type of land sought to be acquired, the use to which it is to be subjected, the permanency of the improvements to be placed thereon, the desirability of entire control of the land in case of future mineral development, and other matters of equal importance. With this in mind it is a matter wholly within the discretion of the Board whether it will be good business to acquire any land where the grantor desires to retain all or part of the minerals. . ."

It has been held in County School Trustees of Upshur County v. Free, 154 S.W.2d 935 (Tex.Civ.App., 1941, error ref.w.o.m.), that school trustees may exclude the mineral estate from a condemnation suit and acquire only the surface, even though the statute provides for condemnation of the fee simple title.

In our opinion, the Board of Control acquired titles which it could legally acquire. Therefore, as to the tracts of land here involved, there is nothing inherent in the titles by reason of the reservations and conditions which would prevent their use for permanent improvements within the sound discretion of your Board, and subject to proper appropriations being made therefor by the Legislature.

Your request does not present the question of the legislative intent with respect to permanent construction on the above mentioned tracts of land as reflected by the various appropriation bills enacted subsequent to the date such land was acquired by the State. This

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is a matter upon which we express no opinion.

SUMMARY

Under an Act authorizing a State agency to acquire title to surplus properties of the United States and others through gift, purchase, or leasehold, such agency is authorized within its sound discretion to accept title subject to a mineral reservation and certain conditions subsequent. Consequently, the reservation and conditions do not in themselves prevent erection of permanent improvements on lands thus held. The advisability of making such improvements is a matter within the discretion of the Board, subject to legislative appropriation.

Yours very truly

PRICE DANIEL
Attorney General


By H. D. Pruett, Jr.
Assistant

APPROVED:

Jesse P. Luton, Jr.
Reviewing Assistant

Charles D. Mathews
First Assistant