



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2019

The Honorable Eddie Lucio, Jr.
Chair, Committee on Intergovernmental
Relations
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0236

Re: Whether the Texas Southmost College
District may acquire and hold title to land
from the General Services Administration
through the Federal Lands to Parks Program
(RQ-0239-KP)

Dear Senator Lucio:

You ask whether the board of trustees for the Texas Southmost College District (“District”) may acquire real property through the Federal Lands to Parks Program and whether it may designate the land acquired for public recreational purposes.¹ The Federal Lands to Parks Program authorizes the Secretary of the Interior to transfer to a state or political subdivision surplus real property needed for use as a public park or recreation area. 40 U.S.C. § 550(b)(2)(C), (e)(2). As a public junior college district, Texas Southmost College District is a political subdivision of the State and is thereby eligible to receive land under the Federal Lands to Parks Program. *See* TEX. EDUC. CODE § 130.122(f) (“Each junior college district . . . is hereby declared to be, and constituted as, a school district within the meaning of Article VII, Section 3, of the Texas Constitution.”); *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 429–30 (Tex. 2016) (stating school districts are political subdivisions). You explain that the District seeks to acquire 18.76 acres of land adjacent to property currently owned by the District, and it plans to use that property for recreational purposes, including using the property’s preexisting soccer field, baseball field, and recreation center for both school and community purposes. Request Letter at 1–2.

You first ask whether the District is authorized to acquire real property through the Federal Lands to Parks Program. *Id.* at 1. Answering your question requires analyzing the authority granted to the District. The Higher Education Coordinating Board (“Board”) exercises “general control of the public junior colleges of Texas.” TEX. EDUC. CODE § 130.001(a). All authority not vested in the Board or the Texas Education Agency “is reserved and retained locally in each of the

¹*See* Letter from Honorable Eddie Lucio, Jr., Chair, Senate Comm. on Intergov’tl Relations, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (July 23, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

respective public junior college districts” or their governing boards. *Id.* § 130.002.² Furthermore, the “governing board of a junior college district shall be governed . . . by the general law governing the establishment, management, and control of independent school districts insofar as the general law is applicable.” *Id.* § 130.084(a). In general, the trustees of an independent school district “have the exclusive power and duty to govern and oversee the management of the public schools of the district.” *Id.* § 11.151(b). The Legislature expressly provided that the trustees of an independent school district “may acquire and hold real and personal property.” *Id.* § 11.151(a). And no provision prohibits acquiring land from the federal government. Thus, the District may generally acquire real property through the Federal Lands to Parks Program.

You also ask whether state law prevents the District from designating the land acquired for public recreational use. Request Letter at 1. Section 11.156 of the Education Code provides: “A conveyance, devise, or bequest of property for the benefit of the public schools made by anyone for any . . . district, if not otherwise directed by the donor, vests the property in the . . . board of trustees” TEX. EDUC. CODE § 11.156(a). The District may use such property:

- (1) for any purpose designated by the donor that is in keeping with the lawful purposes of the schools for the benefit of which the donation was made; or
- (2) for any legal purpose if a specific purpose is not designated by the donor.

Id. § 11.156(b). Accordingly, while the District’s use of any property acquired or received by its trustees must comply with the terms of the transfer, the use must also serve a lawful purpose of the District. *See Love v. City of Dallas*, 40 S.W.2d 20, 26 (Tex. 1931) (“[T]he school property . . . should vest in certain trustees or officers . . . for the use and benefit of the public free schools in such city or town.” (quotation marks omitted)). Furthermore, to the extent the District uses public funds to acquire the land in question, that District must comply with any statutory and constitutional requirements regarding the use of public funds. *See Tex. Att’y Gen. Op. No. KP-0204* (2018) at 2.

You tell us the District plans to designate the land it wishes to acquire through the Federal Lands to Parks Program for recreational use by both the public and the Texas Southmost College District community. *See Request Letter* at 2. Texas courts have concluded that a board of trustees possesses broad discretion in managing school property, provided the board acts consistent with statutory requirements. *See Kaml v. Camp*, 78 S.W.2d 1046, 1047 (Tex. Civ. App.—San Antonio 1935, writ *dism’d*) (“[I]n all other matters within those powers [school boards] have supreme control, subject to supervision by the courts”); *Nacogdoches Indep. Sch. Dist. v. Adams*, 36 S.W.2d 567, 569 (Tex. Civ. App.—Beaumont 1931, no writ) (“Beyond question, the trustees of our public schools are vested with discretion in the management, control, and protection of the school property committed to their care, and the courts should not review this discretion except

²The Legislature gave the Board express authority to contract with and accept donations from “any agency of the United States,” but no provision in the Education Code suggests this authority is reserved exclusively for the Board to the exclusion of individual junior college districts. TEX. EDUC. CODE §§ 61.067, .068.

upon a showing of abuse.”). Additionally, section 11.1511 of the Education Code establishes the specific powers and duties of a board of trustees of an independent school district and provides that the board shall “seek to establish working relationships with other public entities to make effective use of community resources and to serve the needs of public school students in the community.” TEX. EDUC. CODE § 11.1511(b). Allowing the public to use the District’s park land and recreational facilities when not needed by the District would appear to further this “effective use of community resources.” *Id.*; see *Royse Indep. Sch. Dist. v. Reinhardt*, 159 S.W. 1010, 1011 (Tex. Civ. App.—Dallas 1913, writ ref’d) (concluding a school district could allow a booster club to use its baseball field and that doing so served a public purpose). However, it is for the District to determine in the first instance whether designating land for recreational use by the public and the District community serves a public purpose of the District. See TEX. EDUC. CODE § 11.156(b). Thus, no state law prohibits the board of trustees for the Texas Southmost College District from acquiring real property from the Federal Lands to Parks Program and designating it for public recreational use, provided the use serves a public purpose of the District.

S U M M A R Y

No state law prohibits the board of trustees for the Texas Southmost College District from acquiring property from the Federal Lands to Parks Program and designating the land for public recreational purposes if the use serves a public purpose of the District.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
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