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RQ-0019-GA

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OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General  
State of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-42986-03  
I.D. # 072986

Dear General Abbott:

A situation has arisen in Aransas County that necessitates requesting an opinion from your office concerning whether or not a County Commissioner can lease real property owned by the County and located at the Aransas County Airport.

#### FACTS

The Aransas County Airport property was acquired by Aransas County in the early 1940s by deed. At the beginning of World War II, Aransas County leased the Airport property to the United States government. The United States government built a large airport, radar site, barracks and other facilities on the real property located at the Aransas County Airport, including 22 small houses that were used by the United States government to house personnel at the airport facility. After the end of World War II, the United States government canceled its lease with Aransas County in 1949 and returned the Aransas County Airport property and improvements to Aransas County. In the mid-1960s, Aransas County sold 20 of the small housing units to Rockport Yacht & Supply Company and also leased to Rockport Yacht & Supply Company the real property on which the 20 housing units were situated. This lease is attached hereto and marked as *Exhibit "A"* and was subsequently extended to 1986. Rockport Yacht & Supply Company operated and maintained the 20 housing units and paid the lease charges on said rental units until August 7, 1986 when Rockport Yacht & Supply Company received an additional ten-year lease from the Aransas County Commissioner's Court and also permission from said Court to transfer the lease to D. R. Adams and Byron Hailey. A copy of said lease is attached hereto and marked as *Exhibit "B"*. Commissioners Court Minutes dated May 28, 1986 and September 24, 1986 indicated approval of the transfer of the lease and are marked as *Exhibit "B-1"* and *Exhibit "B-2"*. At the same time that the lease was transferred from

Rockport Yacht & Supply Company to D. R. Adams and Byron Hailey, they purchased the 20 housing units owned by Rockport Yacht & Supply Company. The 20 housing units were conveyed to D. R. Adams and Byron Hailey by Bill of Sale. Byron Hailey subsequently died and Mr. Adams became the sole owner of the 20 housing units and the sole lessee under the lease. See Commissioners Court Minutes dated December 14, 1992 as *Exhibit "C"*. The ground lease under the 20 housing units owned by Mr. Adams was renewed by the Aransas County Commissioners Court in 1996 with the renewal term ending December 31, 2002. A copy of said lease is attached hereto and marked as *Exhibit "D"*. On February 10, 1997, the Commissioners Court of Aransas County declared the remaining two housing units located at the Aransas County Airport as surplus and authorized bids to be let for same. See Commissioners Court Minutes dated February 10, 1997 marked as *Exhibit "E-1"*. On the 26<sup>th</sup> day of March, 1997, Aransas County approved the sale to Mr. Adams of the remaining 2 housing units at the Aransas County Airport, thereby making Mr. Adams the owner of 22 housing units at the Aransas County Airport. Aransas County also leased to Mr. Adams the land lying under the two additional housing units. See Commissioners Court Minutes dated March 26, 1997 marked as *Exhibit "E-2"*.

Mr. D. R. Adams, a.k.a. Danny Adams, filed for and was elected to the position of Aransas County Commissioner Precinct #3 at the general election in November of 2002. Prior to his election the Aransas County Commissioners Court, on September 25, 2002, approved for Mr. Adams a ground lease under the 22 housing units for an additional term of five years beginning January 1, 2003. See Commissioners Court Minutes dated September 25, 2002 as *Exhibit "F"*. The Commissioners Court instructed the County Surveyor to provide new field notes and a new survey on the real property being leased to Danny Adams and on additional real property being leased to another lessee in the same general location as the Adams lease. Danny Adams was sworn in as County Commissioner for Precinct #3 around 10:00 AM on January 1, 2003. Danny Adams took the oath required by law for County Commissioners a copy of which is attached hereto and marked as *Exhibit "G"*. The County Surveyor finished the survey and provided it to the County Attorney's office for preparation of the new lease after Danny Adams was sworn in as County Commissioner for Precinct #3. The new lease was prepared but as of the date of this Opinion request has not been executed by either the County Judge nor Danny Adams as lessee although Mr. Adams has paid his January 2003 lease payment under the new proposed lease. A copy of the new lease is attached hereto and marked as *Exhibit "H"*.

#### QUESTIONS:

- 1) May Aransas County, acting through its County Judge and being duly authorized by the Commissioners Court, execute a lease to Danny Adams, County Commissioner of Precinct #3 covering real property located at the Aransas County Airport and owned by Aransas County?
- 2) May Danny Adams County Commissioner of Precinct #3 of Aransas County enter into a lease agreement with Aransas County for the real property located at the Aransas County Airport and

owned by Aransas County upon which proposed leased land sit 22 small homes owned by Danny Adams without violating his oath taken under §81.002 of the Local Government Code?

3) Does Chapter 171 of the Local Government Code supersede or repeal the requirements of §81.002 in regards to the fact situation stated herein in spite of the specific ruling by the Attorney General in Opinion JM-855?

**LAW:**

It appears that the law concerning these questions is covered by § 81.002 and chapter 171 of the Local Government Code. § 81.002 of the Local Government Code requires a County Judge or County Commissioner to take the following oath and swear in writing that “ the person will not be interested, directly or indirectly, in a contract with or claim against the County except:

- (1) a contract or claim expressly authorized by law; or
- (2) a warrant issued to the Judge or Commissioner as a fee of office.”

Chapter 171 of the Local Government Code deals specifically with certain procedures by which a County Commissioner or the County Judge may file an affidavit divulging and setting out that individuals interest in a particular covered business or entity and thereby exempting said official from the criminal penalties attended to voting on business before the court pertaining to that business or entity.

There are several attorney general’s opinions that appear to address situations similar to those matters covered by the requested opinion. JM-855 appears to specifically be on point not only as to applying § 81.002 of the Local Government Code but also as to the particular facts stated in that opinion and presented in this request.

In JM-855 the Attorney General opined as follows:

“A County Commissioner may not, directly or indirectly, contract with the County to lease hangar space at the County’s airport”.

Further in JM-855 the Attorney General attempted to harmonize certain differences between § 81.002 and chapter 171 of the Local Government Code and specifically stated therein “ The only exception to the absolute prohibition in section 81.002 is a contract expressly authorized by law. We find nothing in chapter 171 that expressly authorizes a County Commissioner to contract with the County”. Further in JM-855 the Attorney General specifically opined that law required “ to apply the more specific statute where two provisions apply to the same subject matter but cannot be harmonized”..... “ Under that rule, we find that section 81.002 must control because that’s statute applies only to County Judges and Commissioners while chapter 171 applies to a broader group of public officials”.

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In Attorney General's Opinion JM-1090 the Attorney General appeared to attempt to somewhat limit § 81.002 in stating the following:

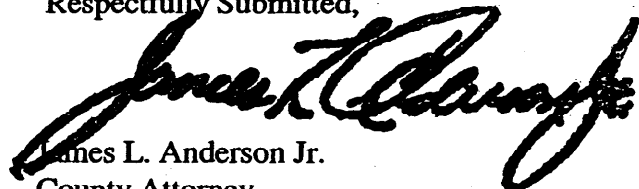
"Attorney General Opinion JM-855 (1988) stated that chapter 171 did not expressly authorize a county commissioner to contract with the county. This opinion determined that section 81.002 barred a county commissioner from leasing space from the county to operate a private business. The facts presented in Attorney General Opinion JM-855 indicated that chapter 171 would not apply to the lease transaction in any case. Thus, chapter 171 did not except that proposed transaction from section 81.002. The statements made by Attorney General Opinion JM-855 about the relationship of section 81.002 and chapter 171 of the Local Government Code should be limited to the fact situation addressed by that opinion and not applied to county contracts generally.

It appears that the fact situation as set out in this request for opinion is almost identical to the fact situation set out in JM-855.

In the Publication "*Traps for the Unwary*" handbook at p. 8 I find that it is therein opined that chapter 171 et seq "impliedly repealed section 81.002 of the Local Government Code, the oath requirement for County judge and County Commissioners, to the extent of inconsistencies between the two statutes" citing as authority therefor JC-121. I am unable to reconcile the statements made in this handbook with the specific statements set out in JM-855 and JM-1090 since the facts situations in JM-855 and this request appear to be for all pertinent purposes identical. In fact it appears that JM-855 and JC-121 both stand for the premise that section 81.002 is granted an exception by chapter 171 only when a specific contract or type of activity is authorized by chapter 171. JC-121 states specifically "Chapter 171 of the Local Government Code, which regulates conflicts of interest and provides exceptions to the section 81.002 prohibition, does not apply to the taking and approval of bail bonds and therefore does not provide an exception to section 81.002 in this regard".

I respectfully request your assistance in answering these questions.

Respectfully Submitted,



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