



November 14, 2003

**RQ-0131-GA**

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OPEN RECORDS DIVISION

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

FILE # ML-43342-03  
I.D. # 43342

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Re: Request for opinion regarding transfer of interest in real property. **OPINION COMMITTEE**

Dear General Abbott:

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ROBERT L. COOK  
EXECUTIVE DIRECTOR

Pursuant to section 402.042 of the Texas Government Code, the Texas Parks and Wildlife Department (TPWD) requests an opinion from your office regarding the legality of TPWD conveying an interest in real property acquired by will and subsequent judgment. Specifically, TPWD seeks your opinion regarding the following questions: (1) Is TPWD authorized to convey an interest in real property to a private entity or individual for private use if the property was awarded by judgment to TPWD "solely for the use and benefit of the Texas Parks and Wildlife Department, acting in the Public Trust . . . for promoting public beach access, and for off-beach parking"? (2) Is TPWD authorized to convey an interest in such property to a private person or entity for use consistent with the terms of the judgment?

**TPWD General Authority Regarding Real Estate**

TPWD is authorized to "solicit and receive donations of land for public purposes . . ." TEX. PARKS & WILD. CODE §13.009(a). TPWD is also authorized to transfer property to a person or entity to use for public purposes, to other governmental entities, or to the donor of the property pursuant to a reversion. TEX. PARKS & WILD. CODE §13.008(b). In addition, the TPWD Executive Director "with the approval of the commission may execute a deed selling real property or an interest in real property under the jurisdiction of the Department if ownership of the real property is no longer in the best interest of the Department." TEX. PARKS & WILD. CODE §13.009(a). It has been TPWD's position that TPWD has considerable discretion in considering requests for easements across TPWD property.

In addition, Chapter 34 of the Natural Resources Code creates a board for lease for land owned by TPWD. TEX. NAT. RES. CODE §34.011. Under Chapter 34 of the Natural Resources Code, a "board for lease may grant easements of rights-of-way on the land" owned by TPWD. *Id.*, at §34.064.

**Maco Stewart Property**

Records of TPWD indicate that Maco Stewart, who died in 1950, bequeathed a life estate in his "Galveston Island Home" to his wife and children. He bequeathed the remainder of his "Galveston Island Home" to the State of Texas as follows:

[U]pon the death of my child last surviving, such "surface estate" in the forementioned land shall vest in the State of Texas to be used and maintained as a Fish, Game, and Oyster preserve and for any other public purpose the Legislature of the State of Texas, or other competent State government official, may deem proper for use of same, hereby expressing my desire that the State of Texas, should it desire to do so,

*To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.*



Take a kid  
hunting or fishing



Visit a state park  
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shall call the property the "Maco Stewart Public Park." . . . . The devisees above named shall not have any right or authority to convey, mortgage, encumber or in any manner dispose of the "surface estate" referred to in this subsection . . . nor to rent or lease such surface estate for a longer period, under any one lease or agreement, of more than five (5) years.

TPWD's records also indicate that in 1969, TPWD obtained by condemnation the life estates of Mr. Stewart's heirs on a portion of the property. *See*, TEX. PARKS & WILD. CODE §§13.305, 21.103. The condemned property became Galveston Island State Park. The property obtained by condemnation did not include a 68.86-acre tract that had been owned by Mr. Stewart. Mitchell Development Corporation purchased the life estate on the 68.86-acre tract from Mr. Stewart's heirs.

However, a dispute arose regarding the ownership of the remainder interest in the 68.86-acre tract. This dispute was resolved by an Agreed Final Judgment (the judgment) entered in the 250<sup>th</sup> District Court of Travis County, Texas on January 9, 1987. Under the terms of the judgment, Mitchell Development Corporation paid TPWD \$1,500,000.00 and TPWD obtained title to 5.998 acres of the 68.86 acre tract. With regard to the 5.998-acre tract, the judgment stated,

It is further ORDERED, ADJUDGED AND DECREED by the Court that the Defendant, the State of Texas, recover of and from the Plaintiff, Mitchell Development Corporation of the Southwest, the title to and possession of the following tract of land solely for the use and benefit of the Texas Parks and Wildlife Department, acting in the Public Trust: Being 5.998 acres, more or less . . . . The said 5.998-acre tract shall be used only for public park purposes, for promoting public beach access, and for off-beach parking.

A copy of the judgment is enclosed.

**Request for Easement/Conveyance**

An individual has requested a road easement from TPWD across the 5.998-acre track. We understand that this individual has obtained an option to purchase property adjacent to the 5.998-acre tract and that, if purchased, the adjacent property would be used for a private residence. There is currently not an existing road over which the easement is requested. TPWD staff has recommended that the easement request be denied based on the terms of the judgment, TPWD resource needs, and best interests of TPWD.

In addition, a question has been raised regarding TPWD's authority to convey the 5.998 acres or an interest in the 5.998 acres (such as a conservation easement) to another person or entity for a use consistent with the uses stated in the judgment, specifically, for "public park purposes, for promoting public beach access and for off-beach parking."

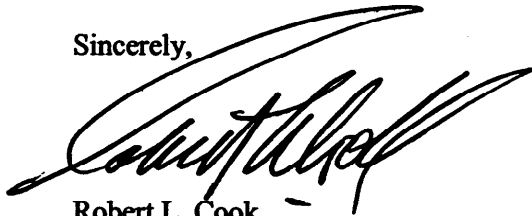
**Request for Opinion**

Therefore, TPWD requests an opinion from your office regarding TPWD's authority to grant an easement over the 5.998 acre tract to access a personal residence. In addition,

TPWD requests an opinion from your office regarding TPWD's authority to convey the 5.998 acre tract or an interest in the 5.9998 acre tract to a person or entity for "public park purposes, for promoting public beach access and for off-beach parking."

Your consideration of this matter is appreciated. If you have any questions or comments, please do not hesitate to contact Ann Bright, TPWD General Counsel, at (512) 389-8558 or by email at

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Cook", written over a horizontal line.

Robert L. Cook  
Executive Director

RLC:LAB:cas

Enclosure