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**OPINION COMMITTEE**



**BILLY W. BYRD**  
**CRIMINAL DISTRICT ATTORNEY**  
**UPSHUR COUNTY**

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MAR 02 2012

IN OPEN RECORDS

405 N. Titus Street, Gilmer, TX 75644  
903-843-5513 • FAX 903-843-3661

FILE # ML-46969-12  
I.D. # 46969

February 28, 2012

**RQ-1044-GA**

Ms. Amanda Crawford  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

Re: Opinion Request

Dear Ms. Crawford:

Recently, I received a letter from Upshur County Judge Dean Fowler requesting my opinion regarding the current lease on Upshur County school land. I am forwarding same to you and do hereby respectfully request your opinion on this matter.

Additionally, I am enclosing a copy of the Lease of Upshur County School Land In Throckmorton & Baylor Counties, Texas I received from Judge Fowler. I appreciate your time and thank you in advance for your assistance.

Sincerely,

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

BILLY W. BYRD  
Criminal District Attorney  
Upshur County, Texas

BWB/lk

Enclosures



**DEAN FOWLER**

County Judge  
P.O. Box 790  
Gilmer, Texas 75644  
903-843-4003 Fax: 903-843-0827

January 10, 2012

Honorable Billy W. Byrd  
Upshur County Criminal District Attorney  
Upshur County Justice Center

Re: Upshur County School Land

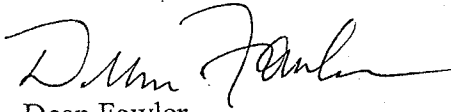
Dear Mr. Byrd:

The current lease on our Upshur County school land expires on May 31, 2012. A copy of that lease is enclosed for your review. In an attempt to begin the process of accepting proposals for a new lease, the Commissioners Court had an agenda item on December 30, 2011 to discuss and take action regarding the same. Mr. Glenn Leach appeared and addressed the Court at that meeting. Among several contentions Mr. Leach has regarding our current lease, he raised one specific point I believe the Court needs your opinion on.

Mr. Leach believes Section IV in our current lease, wherein the Lessee is required to expend \$3.00 per acre per annum for land management and maintenance, is inappropriate. Mr. Leach relies most heavily on Texas Attorney General Opinion No. JM-729 and dated June 26, 1987, a copy of which is enclosed for your reference. In essence, that opinion states that a Commissioners Court does not have the authority to make improvements on county school land with the proceeds received from lease of that land. While I understand Mr. Leach's reasoning, I disagree with his analysis. I do not believe the provision in our current lease requiring the Lessee to expend \$3.00 per acre per annum to manage the land can be classified as proceeds. I have consulted with Mr. Dwight Brannon regarding this issue and he agrees that the provision requiring the expenditure for management of the land does not constitute proceeds received from the lease.

Please provide the Commissioners Court with your opinion regarding this issue. While the Court has the school land on our January 13 agenda, I anticipate we will only take action to advertise for proposals for a new lease. I am going to recommend that we accept proposals until the middle of March and begin negotiating a new lease at that time. If you could respond prior to the end of February it would be greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dean Fowler".

Dean Fowler  
Upshur County Judge

Enclosures

CC: James Crittenden  
Cole Hefner  
Lloyd Crabtree  
Mike Spencer