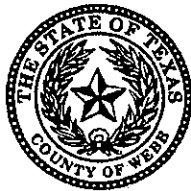


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**OPINION COMMITTEE**



FILE # ML-45391-07  
I.D. # 45391

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October 10, 2007

**Via Certified Mail, Return Receipt Requested**

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

**RQ-0636-GA**

Re: **Opinion Request:**

1. Whether a county and the public schools in the county are authorized to jointly develop or sell rights to the natural resources and minerals in county school lands, and if so, whether the county and public schools therein may share the expenses incurred and revenue realized from such venture?
2. If the foregoing question is answered in the affirmative, whether a county and public schools in the county are authorized to jointly create a local government corporation or other association for the purpose of developing or selling the natural resources and minerals in county school lands?

Dear Honorable Attorney General Abbott:

Please accept this as a request pursuant to Texas Government Code §402.042, for an opinion from your office on the foregoing questions pertaining to the authority of a county and public schools in the county to jointly develop county school lands and share in the costs and proceeds realized from such development.

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The following survey of the law with regard to the management and use of county school lands, including sale proceeds and investment revenue, does not undoubtedly delineate the public schools' authority to participate and share in the development of county school lands, or a county's authority to receive reimbursement for expenses incurred and share in the revenue realized from such venture.

#### Entrustment of County School Lands

Section 6, Article VII, of the Texas Constitution entrusts county school lands and any proceeds from the sale or lease of said lands to the county for the benefit of the county's public schools. Section 6, Article VII is construed to create an express trust for which the county is trustee. *Delta County v. Blackburn*, 93 S.W. 419 (Tex. 1906); *Comanche County v. Burks*, 166 S.W. 470 (Tex. Civ. App.- Fort Worth 1914, writ *ref'd*). As such, the county has a fiduciary duty as trustee to manage, including protection, preservation and disposition of, the trust property for the benefit of its public schools. Tex. Local Gov't Code §263.003(a); Tex. Att'y Gen. Op. Nos. JC-0004 (1999); H-506 (1975).

#### Management of the County Permanent School Fund

The county "permanent school fund" is comprised of the county school lands, proceeds from the sale of such lands, and investments purchased with proceeds from the sale of such lands. Texas Constitution, Article VII, §6; Tex. Att'y Gen. Op. No. O-4933 (1942)(Proceeds from an oil and gas lease goes to the county permanent school fund because such conveyance is a sale of land.). County permanent school fund must be held alone by the county as a trust for the benefit of the public schools in the county. *Id.*; See e.g., *Dallas County v. Club Land & Cattle Company*, 66 S.W. 294 (Tex. 1902)(County could not reimbursement itself from the permanent school fund for expenses related to sale of county school lands; it is not unreasonable that the framers of the constitution should have deemed it politic to make the expense of administering the permanent school fund a charge upon the county's general fund.).

Under Texas Constitution, Article VII, §6b, adopted in 1972, the county permanent school fund corpus may be distributed to the public schools in the county, but such funds may only be expended by the public schools for reducing bonded indebtedness or for making permanent improvements, and the county may only retain a sufficient amount of such corpus to pay ad valorem taxes on school lands or royalty interests owned at the time of distribution. No other purposes are provided.

### Management of County Available Fund

The county "available fund" means revenue and interest derive from the investments of the county permanent school fund, and lease proceeds and other monies realized from the use of county school lands. Texas Constitution, Article VII, §6; Tex. Att'y Gen. Op. No. O-2111 (1940). A county can not seek reimbursement or revenues from available fund for the payment of costs and expenses which may have accrued against the county school lands. Tex. Att'y Gen. Op. Nos. O-823 (1939)(citing and quoting *Tomlinson v. Hopkins*, 57 Tex. 572 (1882): "The whole policy...in granting land for the establishment of a general system of education was to make the land thus granted an available net fund for this purpose; and it was not intended that any part of it should be diverted to any other purpose, not even to the expense of [e.g.] locating or surveying it."); O-2111 (1940)(County is not authorized to use funds derived from rental or lease of county school lands to make improvements on said land; funds derived from rental or lease of school lands must be placed in the available school fund; failure of county to abide by this restriction constitutes a breach of trust.); See also, *Dallas County v. Club Land & Cattle Company*, 66 S.W. 294, 297 (Tex. 1902)(County expenses to convert county school lands to money should be paid by the county from its general fund; Since the lands are a gift from the State of Texas for the special benefit of the educational interests of the county, it would not be a hardship to require the county to bear the expense of administering the lands.).

### County Management of County School Lands

A county, through its commissioner's court, may sell or dispose of county school lands granted for educational purposes only as provided by law. Tex. Constitution Art. VII, §6; Tex. Local Gov't Code §263.003(b). The county's authority to sell or dispose of county school lands includes authority to enter mineral transactions. *Ehlinger v. Clark*, 8 S.W.2d 666 (Tex. 1928). Further, a county may invest the proceeds from the sale or disposition of county school lands in bonds and securities under restrictions prescribed by law, and the county shall be responsible for all investments. Tex. Constitution Art. VII, §6. A county may not delegate its constitutional authorities of county school lands. Tex. Att'y Gen. Op. No. JC-0399 (2001).

The Texas Trust Act (the "Act"), Subtitle B of the Texas Property Code, applies to the permanent school fund, and the Act's provisions have been applied to the permanent school fund. Tex. Prop. Code §111.003; Tex. Att'y Gen. Op. Nos. M-1104 (1972); JC-0004 (1999). The Act provides the parameters for a trustee to hold and manage trust property, including rights to develop trust property, to the extent the Act does not conflict with the requirements of authority creating the trust. Tex. Prop. Code §113.001; Tex. Att'y Gen. Op. No. JC-0399 (2001). For example, the Act addresses a trustee's right to enter a mineral transaction and receive compensation for acting as trustee, reimbursement for advances made for the convenience, benefit or protection of the trust or trust property, or reimbursement for expenses incurred while protecting and administering the trust or because of the trustee's holding or

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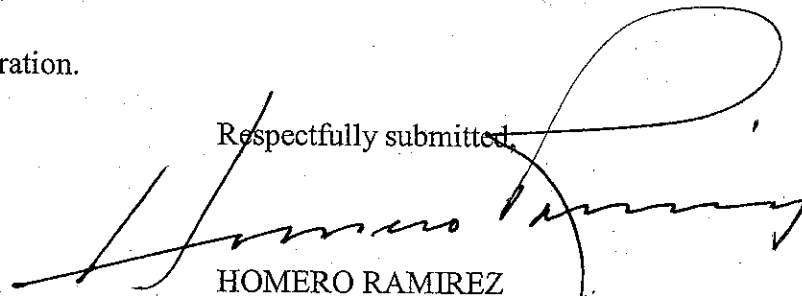
owning trust property. Tex. Prop. Code §§113.012, 114.061, 114.063. Such reimbursement comes from the trust, trust principal or income or partly from both. Tex. Prop. Code §§114.061(a), 114.063(a). However, as discussed above, the Texas Constitution supersedes and, while not construed to limit a county's management of county school lands as trustee, is construed to limit a county's receipt of funds from the county permanent school fund and available fund.

Recent enactment of House Bill 890 by the 80<sup>th</sup> Texas Legislature, Regular Session, 2007, added Section 45.113, Chapter 45, Subchapter E, to the Texas Education Code. Section 45.113 provides additional authority and guidance for a county's management of the county permanent school fund. A county may now establish an irrevocable trust for the proceeds of a sale or other disposition of county school lands and invest the principal of such a trust in any investment permitted for other county funds under Chapter 2256, Government Code. Tex. Educ. Code §45.113(a). The members of the commissioners court must be the sole trustees of the trust, and the trustees may not delegate their authority to manage and invest the trust, but may contract with qualified persons for investment advice. Tex. Educ. Code §45.113(b). Finally, the trust principal constitutes a portion of the county permanent school fund and must be held in perpetuity for the benefit of the public schools in the county, and the income of the trust constitutes a portion of the county available school fund and may be distributed as permitted by law. Tex. Educ. Code §45.113(c). Additional investment guidance or a county's authority to receive available fund is not provided.

While a county, as trustee, has some authority to manage the county school lands, and public schools in the county are the beneficiaries and have some authority to receive county permanent school and available fund, further clarification is necessary to determine a county's and the public schools' authorities in participating in a joint venture to develop or sell natural and mineral resources in county school lands, and in seeking reimbursement for expenses and sharing revenue resulting therefrom.

Thank you for your consideration.

Respectfully submitted,



HOMERO RAMIREZ  
WEBB COUNTY ATTORNEY

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Attorney General, State of Texas  
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cc: Honorable Webb County Commissioners Court Members  
Honorable Delia Perales, Webb County Treasurer  
Mr. Leo Flores, Webb County Auditor  
Mr. Roberto J. Santos, Superintendent – United Independent School District  
Ms. Veronica F. Guerra, Superintendent – Laredo Independent School District  
Dr. David Jones, Superintendent – Webb Consolidated Independent School  
District  
Mr. Juan J. Cruz, Attorney for UISD  
Mr. John Kazen, Attorney for LISD  
Mr. Oscar Vela, Attorney for WCISD