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The Honorable Dan Morales
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RECEIVED
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FILE # ML-40602-98
I.D. # 40602 Opinion Committee

Attn: Sarah J. Shirley, Chief, Opinions Division

Re: Authority of a community college district to enter into a long-term lease with an independent school district to construct a public school facility on community college property

Dear General Morales:

The Dallas Community College District (the "College"), has asked the Coordinating Board to submit the following request for an Attorney General's opinion.

The College, a political subdivision of the State of Texas, has been requested by an independent school district (the "School District") to permit the School District to acquire some unimproved property at one of the College's campuses to establish a specialty high school. The site in question is within the boundaries of the School District. The site would be a sufficient distance from the College's buildings to preclude direct contact between the College's students and the School District's students. The School District would provide access to the site by an easement from the College, and the cost of providing access, such as paving, would be the responsibility of the School District.

The College does not need the property at the present time for college purposes. The area comprising the School District and surrounding the College's campus is highly developed. Very few tracts of land are available to the School District for this purpose. Because of the highly developed nature of the land in the area, the College does not wish to sell the property in that it might need the property in the future. Ideally, the College would like to lease the property to the School District. The School District would construct a building to house the specialty high school on the property. The School District would utilize the building during the day. The School District and the College anticipate that they would enter into an interlocal agreement whereby the College could use the building in the evening and at night to

The Honorable Dan Morales
December 15, 1998
Page 2

conduct classes and other programs for the College should such need arise in the future.

It is anticipated that the School District would use bond proceeds to construct the building on the College's Campus, with the final maturity of the bonds being twenty-five years to final maturity. The anticipated useful life of the building would be somewhat longer and would be determined by design and engineering considerations.

The following is a review of some of the legal authorities that appear to impact this matter: Under current law, the College is generally authorized to lease its property. Texas Education Code §130.084 provides that the "board of trustees of junior college districts shall be governed in the establishment, management and control of the junior college by the general law governing the establishment, management and control of independent school districts insofar as general law is applicable. *See also, Shepherd v. San Jacinto Junior College District*, 363 S.W.2d 742, 747 (Tex. 1962) (holding that a junior college district is treated as a "school district" for constitutional purposes). Texas Education Code §11.151 provides that the "trustees of an independent school district constitute a body corporate and in the name of the district may acquire and hold real and personal property The trustees may, in any appropriate manner, dispose of property *that is no longer necessary for the operation of a school district.*" (Emphasis added).

There are two reported Texas cases that discuss the general authority of a school district to dispose of school property under a lease with a third party. In *Royce I.S.D. v. Reinhardt*, 159 S.W.2d 1010 (Tex. Civ. App.--Dallas 1913, writ ref'd), a three-year lease by a school district to a local booster club of the school's baseball fields for use during the summer when school was not in session was upheld. There, the court analogized to a municipal corporation that had the authority to permit its buildings to be used for other purposes when they were not being used by the city. 159 S.W.2d at 1011. In *River Road Neighborhood Association v. South Texas Sports*, 720 S.W.2d 551 (Tex. App.--San Antonio 1986, writ dism'd), the court recognized that the school district had the authority to enter into lease agreements, but that a thirty-year lease to a private party with an exclusive use provision for the first thirty-two months of the lease was an invalid exercise of the school district's authority because it abrogated the power of the district to control its property for school purposes. 720 S.W.2d at 560.

Your office has made similar interpretations regarding the authority of school districts to enter into lease agreements. It has found that such power is limited to those situations where the lease will not interfere with school functions. In Op. Tex Atty' Gen. No. JM-531 (1986), your office determined fact questions precluded a determination on the validity of a fifty-year lease of school property, but stated that the board of trustees of an independent school district has exclusive power to manage and control school property and, therefore, could enter into lease agreements under its discretion "to the extent it will not use this power to impinge upon the district's purpose, that is, operating a public school." *Id.* at p.1. In Op. Tex Att'y Gen. No. M-1047 (1972), your office found that a school district could not grant an outright twenty-year lease of school property to a non-profit corporation for use as a neighborhood center, reserving no discretion to the school board to terminate the lease in the event the school should have need for the property in the future.

The law is clear regarding the ability of a school district to issue bonds to construct a building on leased property. Op. Tex. Att'y Gen. No. H-403 (1974) held that a governmental entity could construct a facility on leased land if the expenditure was for a proper public purpose and made in exchange for adequate public benefits. Op. Tex. Att'y Gen. No. MW-290 (1981) determined that a political subdivision may use bond proceeds to improve a building acquired by lease.

It would appear that the lease would have to be made on the basis of fair market value based on Section 272.001(b)(5) of the Local Government Code and Op. Tex. Att'y Gen. No. DM-441 (1997). Consequently, the proposed lease would provide for lease payments that would be determined at a fair market value less the fair market rental value of any use by the College.

Given the foregoing considerations, we would request your opinion on the following questions:

1. Does the College have the authority to lease its property to the School District so that the School District can construct a high school facility on the property?
2. Will the College satisfy the requirement that it not delegate its exclusive power to manage and control the property (A) by retaining the right to approve site development and

The Honorable Dan Morales
December 15, 1998
Page 4

development plans to the extent reasonably necessary to be satisfied that the improvements are designed to fulfill the stated purposes of the lease; and (B) by restricting the School District to using the property only for the public school purposes, such as the operation of a secondary school by the School District, and that any other contemplated use must be approved by the College?

3. Assuming the answers to the first two questions are in the affirmative, can the College lease its property for a period beyond the term of the current board of trustees of the College?
4. Can the School District use bond proceeds for the construction of the building?
5. If the answers to the preceding questions are in the affirmative, can the College lease the property for the approximate life of bonds (approximately 25 years) or the anticipated useful life of the building (possibly up to 50 years)?
6. Would the requirement that the College receive fair market value for the lease be met by utilizing a third party with appropriate professional credentials to appraise what the fair market is for the lease payments and what the fair market is for the College's use of the improvements and other facilities belonging to the School District?

Your prompt attention to these questions will be appreciated.

Cordially,



Don W. Brown

cc: J. William Wenrich
Robert Young