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**OPINION COMMITTEE**



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**RQ-0588-GA**

Honorable Greg Abbott  
Attorney General of Texas  
P O Box 12548, Capitol Station  
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- Re: 1) Airport land leased to a private corporation, and buildings built by said corporation, gifted to the City of Bryan, and then leased back to the corporation for its private use.
- 2) Airport land leased to the Bryan Business Council, Inc., a Non-Profit entity, create by the City of Bryan to attract business to The City of Bryan, and then sub-leased to Petroleum Helicopters, Inc., a Louisiana Corporation, authorized to do business in Texas, for a Heliport.

Dear General Abbott:

I am soliciting your opinion at the request of, and on behalf of, the Brazos County Chief Appraiser and the Brazos County Appraisal District.

The City of Bryan is the owner of the "Coulter Field Airport", and as owner, the Bryan City Council has entered in to two leases referenced above.

The first lease is between the City of Bryan and Triple Six, Inc., a private Corporation doing business in the State of Texas. Triple Six, Inc. leased the land (approximately 14,800 square feet) from the City of Bryan, then built a building (hanger) that was given to the City of Bryan. Triple Six, Inc. then contracted to lease the land and hanger back from the City. The total amount of lease appears to be approximately \$33,869.06. The lease contract allows Triple Six, Inc. to sub-lease hanger space to owners of airplanes under terms set out by Triple Six, Inc. It is unknown as to the compensation Triple Six, Inc. receives from these sub-let leases. Enclosed herewith, is a copy of the lease between the City of Bryan and Triple Six, Inc.

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The second lease is between the City of Bryan and Bryan Business Council, Inc., a non-profit entity, created in 1982 by the City of Bryan, pursuant to the Texas Non-Profit Corporation Act for the purpose of attracting and promoting commercial and industrial enterprises within the vicinity of the City of Bryan (See your June 18, 2004 Opinion GA-0206 that held, "The Bryan Business Council, Inc. is not a "governmental body" within the terms of the Open Meetings Act, chapter 551 of the Government Code). Bryan Business Council Inc. sublet the lease to Petroleum Helicopters, Inc. for the benefit of PHI Air Medical Texas of Conroe, Texas. The lease contract requires a payment of \$2,500 per month for the first five year lease and increases 10% to \$2,750 per month the second five year term, another 10% or \$3,025 per month for the third five year term, another 10% or \$3,327.50 per month for the fourth five year term, and an additional 10% or \$3,660.25 per month for the fifth and final five year term. Enclosed are copies of the lease contracts, along with a copy of Non-Disturbance and Attornment Agreement between the City of Bryan ("Lessor"), the Bryan Business Council, Inc. ("Lessee"), and The First National Bank of Bryan ("Mortgagee") pertaining to an 8,000 square foot ground lease to the "Lessee" and a Promissory Note to the "Mortgagee" by the "Lessee".

Having set out the forgoing facts pertaining to the above two leases, I now pose the following questions:

1. Would the property leased to Triple Six, Inc. qualify for exemption from taxation under Section 25.07, Property Tax Code, or any other section of the Tax Code, since Triple Six, Inc. is a private corporation, that from all appearance, is a for profit entity?
2. Would the lease to Bryan Business Council, Inc., who then sub-let to Petroleum Helicopters, Inc., a Louisiana corporation doing business in Texas, qualify for exemption under Section 25.07, Property Tax Code, or any other Section of the Tax Code?
3. If the answer to question one and two are answered in the negative. Who would be legally liable for the tax and in what manner would the taxable value be determined?

The Bryan City Attorney contends that these properties are exempt and bases his contention on the case of Travis Central Appraisal District v. Signature Flight Support Corporation, 140 S. W. 3d 833 (Tex.App.-Austin 2004, no pet.). In that case, the parties stipulated that the properties were a public transportation facility and qualified under Section 25.07, Property Tax Code. While there are similarities between the facts in the "Travis Central" case and the facts with this application, it is important to note that the Travis Central case involved a fixed base operation. My understanding of "fixed base operation" is that it is an operation that generally serves the public such that any person

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who is legally entitled to land an aircraft at the airport is also legally entitled to use the services of a fixed base operator.

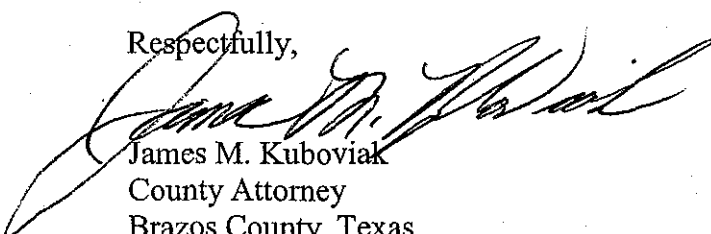
My understanding is that the properties in question at Coulter Field are not what would be known as "fixed base operations".

In my research, I obtained Attorney General Opinion No. DM-188, which relates to request for exemption under Section 25.07, Property Tax Code. While the Attorney General Opinion did not answer the question of whether the exemption at issue should or should not be granted, it did set forth some guidance regarding the factors to be considered in applying that section. According to the Opinion, there must be a showing that the use of municipal airport property is in direct support of the City's operation of the airport. If the facility in question is not being used exclusively in support of the City's operation of the airport, but instead to service the private commercial interest of the lessee, then the property is not entitled to the tax exemption. This seems more in line with my understanding of the nature of the property leases in question at Coulter Field.

While additional facts may need to be considered, it appears that in order to qualify as a public transportation facility, the primary use must be in serving the general public. Since these facilities do not appear to serve the general public, but instead serve only the business purposes of the lessees and/or sub-lessees, my best analysis is that these properties are not entitled to the exemption under Section 25.07.

Your written opinion addressing these matters would be greatly appreciated.

Respectfully,



James M. Kuboviak  
County Attorney  
Brazos County, Texas