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OPINION COMMITTEE



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Elizabeth Murray-Kolb
Guadalupe County Attorney

RQ-1059-6A

211 W. Court Street
Seguin, Texas 78155-5779
(830) 303-6130
FAX (830) 379-9491

May 8, 2012

Office of the Attorney General
Attn: Opinions
P.O. Box 12548
Austin, Texas 78711-2548
Via CMRRR No. 7005 1160 0001 8578 5619

RE: Request for Opinion

QUESTION: May a County enter into a long term lease of county owned vacant land to a Children's Advocacy Center for a nominal sum per year?

Dear Sir or Madam:

Guadalupe County currently owns several acres of land upon which the offices of Justice of the Peace, Precinct 1, are situated. This property is located several miles from the County Courthouse. The County has been approached with the concept of leasing an unused area of said land to the local Children's Advocacy Center. The County does not anticipate needing to use this vacant land for any additional structures or parking for the JP and in all likelihood, the land would remain unused for so long as the County owns the property.

Though no actual survey has been performed, an aerial showing the proposed lines of the property to be leased is attached hereto as Exhibit 1.

The Guadalupe County Children's Advocacy Center was duly formed via an Interagency Agreement on October 16, 2009. It is also a 501c(3) Non-Profit Agency pursuant to IRS regulations. Since its inception, it has performed an invaluable service for children that have been the victims of criminal acts as well as for families of those victims. The problem they are facing is that this organization has clearly outgrown its current facilities (a modified home within the City of Seguin). They very much need to expand square-footage wise and have a facility constructed specifically for the purposes and people they serve.

The concept in question would be to lease the raw land to the Children's Advocacy Center for \$10 per year, 50 year term with an option to renew for an additional 50 year term. The Center, using its own funds and/or funds it is able to generate, would construct a building specifically tailored to its needs on this vacant piece of land. There

would be a termination clause, but those details have not been finalized. Notwithstanding same, it is understood that in the event of termination of the Lease for the reasons that would be specified in the Lease, any improvements placed upon this land by the Advocacy Center would remain and become the property of Guadalupe County, Texas.

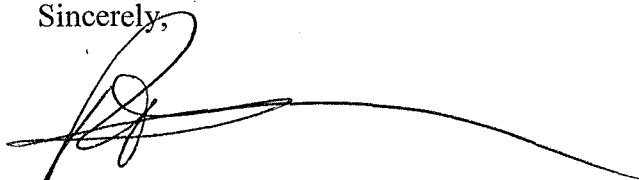
The Statutory Regulations governing a County's Sale or Lease of Property appear in Chapter 263 of the Texas Local Government Code. Section 263.001 allows a County to Lease property via a public auction and Section 263.007 authorizes a lease by utilizing a sealed bid procedure. Given the location of this property on a State Highway and adjacent to Interstate 10, there is no doubt that the use of either of these procedures would result in some other person, business or entity providing a bid far in excess of the proposed \$10 per year to be paid by the Advocacy Center.

Section 264.403(c) of the Texas Family Code states that a "participating entity" may provide office space and administrative services to an advocacy center. Other than that statute, there is no other provision in Section 264.401-411 of the Family Code that addresses funding or the provision of resources by a county government. The only other provision relative to funding that comes close is Section 264.006 of the Texas Family Code that authorizes a County to appropriate funds for the administration of a county Child Welfare Board and provide "...services to and support of children in need of protection and care without regard to the immigration status of the child or the child's family.". Guadalupe County does have a separate Child Welfare Board. An argument could be made that, notwithstanding the use of the word "funds", the County could lease the vacant land to a Child Welfare Board which in turn would lease to the Advocacy Center.

In Attorney General Opinion JM-753, the issue was presented relative to the provision of "rent-free" space in a county courthouse annex. The statutory framework appears in the current Section 292.001 of the Local Government Code. In the opinion, a distinction was made between the use of space in an actual courthouse vis-à-vis the use of space in a detached county building. The opinion concluded, inter alia, that a county could lease space to a public or private entity assuming the space was not in "the courthouse". Unfortunately, the opinion did not discuss the applicability of Sections 263.001 or 263.007 of the Local Government Code or otherwise address the issues sought to be addressed here. Once again though, an argument could be made that if it is proper to lease *space* in a county building that is not "the courthouse", then it would likewise be proper to lease *vacant land* if the land is not part of the county courthouse.

We are hereby asking for your opinion to answer the question posed at the beginning of this letter.

Sincerely,



Robert E. Etlinger
Asst. County Attorney