



LEGAL DEPARTMENT

June 30, 2021

Mr. Jim Evans
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Ms. Shanna Ramzinski
Chief Appraiser
Caldwell County Appraisal District
211 Bufkin Lane
Lockhart, Texas 78644
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Dear Mr. Evans and Ms. Ramzinski:

Thank you again for meeting with me recently via Zoom to discuss the decision to remove the public exemptions on properties located at the San Marcos Regional Airport (“Airport”) and the City’s timely filed protest of that action. As I understand from our meeting, the action to remove the exemptions was based on two positions/components: 1) some of the Airport leases have the ownership of the improvements not reverting to the City until the end of the lease; and 2) the hangars are leased for private use rather than public use.

It is the City’s position that all property at the Airport regardless of the lease type (ground or facility) should be tax exempt based on State law (Texas Constitution and Section 11.11 of the Texas Tax Code), appellate court decisions and Attorney General rulings. The City agreed to operate the Airport as a public airport when accepting the grant of the Airport from the United States Government in 1966. I provided the Deed to you earlier and refer you to the language that provides that the Airport “shall be used for public airport purposes for the use and benefit of the public on reasonable terms and without unjust discrimination...”

In a recent study conducted by the Federal Aviation Administration (“FAA”) the Airport was described as a regional airport meaning it is located in a metropolitan area and serves a large population. As described in the recently updated Airport Master Plan (on the City’s website), the Aviation Division at the Texas Department of Transportation found in a 2018 economic impact study that the financial impact of the Airport was: 1) 664 total jobs; 2) \$22.7 million in payroll; and 3) \$82.1 million in economic output. Further, the Airport is a Foreign Trade Zone.

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The City is respectfully asking that your office restore the public property exemptions of Airport property that have been in place for many years. The applicable provisions of the Texas Constitution and Section 11.11 of the Texas Tax Code are controlling in this case and require that the City-owned property be tax exempt. As you know, Section 11.11 of the Tax Code provides that property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes. All property located at the Airport, including hangars, is used for the public purpose of operating a regional airport.

I have reviewed the court opinion that you provided, *Dallas Central Appraisal District v. Mission Aire IV, L.P.*, 279 S.W.3d 471 (Tex. App.—Dallas 2009, pet. denied), relating to when ownership of any airport improvements constructed by a tenant transfer to the city as the owner of an airport. It is always the City's intent to provide that any improvements to Airport property become property owned by the City. As I mentioned during our meeting, the City's Airport Manager has been in contact with the City of Arlington to discuss the issue of airport tax liability. The City of Arlington amended their airport leases to address the concern around the "ownership" issue related to improvements. Their leases were amended to include the following provision: Lessor shall own and have title to the improvements to be placed upon the Leased Premises from and after the issuance of a Certificate of Occupancy by the City of Arlington. I believe the San Marcos City Council and Airport Tenants would be amenable to amending the City's leases in order to avoid tax liability at the Airport.

The City believes *Travis Central Appraisal District v. Signature Flight Support Corp.*, 140 S.W.3d 833 (Tex. App.—Austin 2004, no pet.), which is cited by the court in the *Mission Aire* case, is dispositive and supports the City's position that all airport property should be tax exempt. In this case, the court held that the City of Austin was the owner of airport improvements once the improvements were accepted and therefore the improvements were tax exempt.

In addition, the Texas Attorney General's office has specifically examined the issue of airport hangars in Tex. Att'y. Gen. Op. No. DM-188 (1992) and Tex. Att'y. Gen. Op. No. JM-464 (1986). Although not mandatory legal authority, opinions issued by the Texas Attorney General are considered persuasive legal authority. The Attorney General ruled in DM-188 that property owned by the City of Amarillo consisting of an airport maintenance hangar that is leased to a private party for operation as such is exempt from ad valorem taxation if the property is used in direct support of the operation of the airport by the city. The Attorney General relied on a previous ruling, JM-464, that held: as a matter of law a city's airport and airport facilities, including those leased to a private individual, are impressed with a public purpose sufficient to meet Texas constitutional and statutory tests regarding ad valorem taxes.

The FAA requires that the Airport be as self-sustaining as possible. The City leasing out hangars is a requirement of the FAA. The City is required to operate the Airport for the public and leasing out hangars is how the Airport accomplishes that requirement. All hangars must be used for aeronautical purposes and all lease agreements the City enters into include this provision. The

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City maintains control of all Airport property, including hangars, through the leases and Minimum Airport Standards required by the FAA and approved by the City Council.

I am attaching a few resources that may be helpful to a review of this issue. The Federal Register notice may be helpful in explaining FAA Rules relating to airport revenue (see highlighted sections starting on page 21). The payment of property taxes is not listed as a proper expenditure of segregated airport funds. I am also attaching an advisory issued by the Texas Department of Transportation's Aviation Division relating to use of airport hangars to bolster the City's position that airport hangars are a part of the overall operation of the airport and are used primarily for the health and welfare of the public. The City has reached out to legal counsel for both the FAA and Texas Department of Transportation's Aviation Division to get their view on this issue but have not heard back from them yet. I will supplement this letter with any response I hear from them as soon as it is received.

Thank you for your consideration of the City's request to restore the public exemptions to all property at the Airport in accordance with State law. The Airport provides public transportation support for the entire region including Caldwell County. It is counterproductive to tax any property at the Airport because the Airport benefits Caldwell County without any financial impact to the County. If you are unwilling to restore the public exemptions at the Airport, please schedule a hearing before the Appraisal Review Board so the City can present its case.

Sincerely,

Jacqueline Cullom
Assistant City Attorney

c: Michael J. Cosentino, City Attorney
Joe Pantalione, Assistant City Manager
Marie Kalka, Director of Finance
Sabas Avila, Interim Director of Public Works
Jim Wimberly, Texas Aviation Partners
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