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*Public Education*

## AG issues opinion on property of closed charter schools

[June 30](#) — The Texas attorney general said in a [June 20 opinion](#) that the education commissioner has authority to take possession of property of a charter school that is no longer in operation and that a court likely would conclude that such property was not “unappropriated public domain” belonging to the Permanent School Fund. The Texas Education Agency (TEA) had [requested](#) the opinion to address questions about the legal status and disposition of such property amid an increase in charter school revocations.

Education Code, [sec. 12.128\(c\)](#) requires the education commissioner to take possession and assume control of the property of a charter school that ceases to operate and to supervise the disposition of the property according to the law. [Sec. 43.001\(a\)\(2\)](#) states that all land recovered by the state by suit or otherwise is considered unappropriated public domain belonging to the Permanent School Fund.

The attorney general wrote that because the Legislature had “expressly set aside the returned public property” as subject to the control and disposition of the education commissioner, it likely was not unappropriated public domain for the Permanent School Fund. The opinion did not address ownership of any particular property, stating that to do so would involve the evaluation of questions of fact.

The opinion did not directly address the interests of private entities that may have helped finance certain charter school facilities but did review statutory and constitutional provisions that could affect the disposition of the property of a former charter school, concluding that:

- Natural Resources Code, ch. 31, does not authorize the General Land Office to unilaterally direct the disposition of returned charter school property but does provide for land office involvement in the education commissioner’s disposition of such property;
- Tex. Const., Art. 3, [sec. 51](#) (banning most grants of public money to private interests) and [sec. 52\(a\)](#) (concerning debt not payable from property taxes) prohibit the education commissioner from gratuitously granting such property to private interests; and
- the fiscal 2016-17 general appropriations act provides that proceeds from the disposition of real property returned to the state from a charter school that is no longer in operation are appropriated to TEA for management and closure of entities and disposition of state property.

The opinion did not foreclose the possibility that other law could apply to the commissioner’s disposition of the property.

— by Janet Elliott