



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL**

August 26, 1976

The Honorable Robert E. Schneider
Executive Director
Texas Water Rights Commission
P. O. Box 13207
Austin, Texas 78711

Opinion No. H-869

Re: Whether section
25.031(c), Water Code,
authorizing special
districts to purchase a
portion of the capacity
of a regional waste dis-
posal system, can be
applied constitutionally
to bonds authorized prior
to the passage of the
statute.

Dear Mr. Schneider:

You have requested our opinion regarding the authority of a special district to use bond proceeds to purchase a portion of the capacity in a regional waste disposal system.

Your first question is:

whether Section 25.031(c) [Water Code] is a constitutionally valid authorization for Inverness Forest Water Control and Improvement District to use the [previously voted] bond proceeds . . . to purchase capacity in the Gulf Coast Waste Disposal Authority's regional sewage treatment plant. . . .

Section 25.031(c) provides in pertinent part:

Notwithstanding any provision of this chapter or any other law to the contrary, a district may use the proceeds of bonds issued for the purpose of constructing a

waste disposal system or systems, and payable wholly or in part from ad valorem taxes, for the purchase of capacity in, or a right to have the wastes of the district treated in, a waste collection, treatment, or disposal system and facilities owned or to be owned exclusively or in part by another public agency, and a district may issue bonds payable wholly or in part from ad valorem taxes specifically for such purpose if a majority of the resident electors of the district have authorized the governing body of the district to issue bonds for that purpose or for the purpose of constructing a waste disposal system or systems. The bonds shall be issued in accordance with the provisions of, and shall be subject to the same terms and conditions of, the laws authorizing the district to issue bonds for the purpose of constructing waste collection, treatment, and disposal systems, except as otherwise provided in this subsection.

In brief, this question turns on whether section 25.031(c) of the Texas Water Code, as to bonds authorized prior to its enactment, alters the result of Attorney General Opinion H-567 (1975), which indicated that proceeds from the sale of bonds in 1965 by Inverness Forest Improvement District could not be used to contract for sewage disposal services where the district would neither own nor operate the facilities. While section 25.031(c) is designed to permit the "purchase of capacity" type transaction which Attorney General Opinion H-567 (1975) held to be unauthorized, the enactment of that section does not change the basic results of Opinion H-567 concerning the Inverness Forest "special district."

First, there is the obvious problem of applying section 25.031(c) retroactively. Tex. Const. art. 1, § 16. Second, as initially determined in Attorney General Opinion H-567 (1975), bond proceeds may only be used for the purposes for which they were voted. It is clear that a resolution calling a bond election becomes a part of the contract and agreement between the voters and the District, should the voters authorize the issuance of the bonds. Crowell v.

Cammack, 40 S.W.2d 259 (Tex. Civ. App. -- Amarillo 1931, no writ). To hold that the Legislature could change the agreement between the voters and the district could constitute an impairment of the obligation of contracts. Tex. Const. art. 1, § 16. Third, the Legislature cannot, by legislative enactment, alter the results or effect of an election held pursuant to a constitutional mandate:

[T]he Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted. Tex. Const. art. 16, § 59(c).

City of Aransas Pass v. Keeling, 247 S.W. 818 (Tex. Sup. 1923). In short, bond proceeds must be used for purposes for which they were voted. Lewis v. City of Fort Worth, 89 S.W.2d 975 (Tex. Sup. 1936); Barrington v. Cokinos, 338 S.W.2d 133 (Tex. Sup. 1960); City of Beaumont v. Priddie, 65 S.W.2d 434 (Tex. Civ. App. -- Austin 1933, no writ). Therefore, the answer to your first question is that the enactment of section 25.031(c) of the Texas Water Code does not alter the conclusions reached in Attorney General Opinion H-567 (1975) regarding the use of previously voted bond proceeds.

If the result of H-567 is not affected and the special district must use the bond proceeds to purchase a proprietary interest in the regional sewage plant rather than entering into a service contract for plant capacity, you ask that we

determine the nature and scope of the proprietary interest which must be purchased

It is pertinent to note that the bond propositions submitted to the electorate of the Inverness Forest Improvement District on August 14, 1965, authorized bonds

for the purpose of purchasing and constructing a water and sanitary sewer system and a sewage disposal plant for the district. . . . (Emphasis added).

Furthermore, similar propositions were passed in October 16, 1967 and February 14, 1970 elections, which provided bonds

for the purpose of purchasing and/or [February 14, 1970 proposition used "and" instead of "and/or"] constructing extensions and additions to the district's existing water and sanitary sewer system and drainage system. . . .

Although Opinion H-567 did not involve the method to be used or what would constitute "purchasing and constructing," it would certainly be within the "sound judgment and discretion" of the special district to purchase and construct as they determine within the electoral guidelines. Barrington v. Cokinos, supra, at 142. Therefore, it would not be unreasonable for the special district to make a determination that purchasing and constructing, or causing to be constructed, an undivided, legal interest in a regional waste plant would satisfy the electoral mandate. The special district would own a portion of the physical plant rather than the mere contractual right to a guaranteed use or portion of the capacity of the regional system. Thus, the special district would have used the bond proceeds to purchase and construct a facility which the electorate had authorized.

Since the issuance of bonds creates a contract between the issuer and the bondholders, City of Aransas Pass v. Keeling, supra, it should be noted that the definition of "system" in each Bond Order is as follows:

The term system as used in this order shall include and mean water works and sanitary sewer system owned and operated by the District, and all extensions and improvements thereof and improvements thereto whensoever made.

Neither the bond election propositions, nor the Bond Order specifies how the facilities are to be purchased and constructed. It is, therefore, obvious that the portion of the regional system purchased by the special district would become part of the "system." Provisions of Chapter 25 of the Texas Water Code also support the proposed transaction since "[a] district may contract . . . to purchase . . . disposal facilities or systems." Water Code § 25.022. See Water Code §§ 25.024; 25.025; 25.027; 27.028. Therefore, in answer to your second question, we believe that it would be reasonable, and in pursuance of the electoral mandate as well as the Texas Water Code, to approve issuance and use of bonds to purchase an undivided, legal interest in a regional system, if the special district decides to do so in the exercise of its discretion.

In your third and final question, you ask:

[I]f the district should purchase a proprietary interest in the regional system, to what extent must the district participate actively and directly, if at all, in the operation and maintenance of the system?

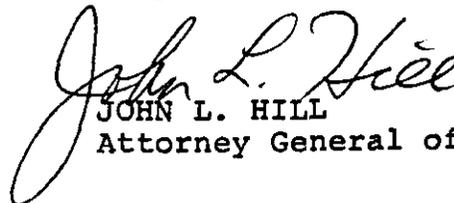
Neither Attorney General Opinion H-567 (1975), nor the bond election propositions or Bond Orders specifically address this question. However, provisions of Chapter 25 of the Texas Water Code specifically permit such operation contracts between a special district and a "district." Water Code §§ 25.027; 25.028. Furthermore, one political subdivision of the State, such as Inverness Forest, can transfer money to another political subdivision of the State where the latter assumes the unqualified burden and duty of using it for a governmental function of the former; however, there must be a quid pro quo contract. Bexar County Hospital District v. Crosby, 327 S.W.2d 445 (Tex. Sup. 1959); San Antonio River Authority v. Shepherd, 299 S.W.2d 920 (Tex. Sup. 1957); City of Aransas Pass v. Keeling, supra. Even so, the operation contract should provide only for the operation of the facilities in question with sufficient assurance that the special district does not delegate away

its governmental powers. City of Galveston v. Hill, 519 S.W.2d 103 (Tex. Sup. 1975). In our opinion, the purchase of an undivided, legal interest in the regional plant, to be operated by a "district," would not be an unlawful delegation of governmental powers, since the special district would be using the services of the operating agency without delegating rate making or other powers. Therefore, in answer to the third question, the special district may enter into an operation contract with a Texas Water Code "district."

S U M M A R Y

The enactment of section 25.031(c) of the Texas Water Code does not affect the validity of Attorney General Opinion H-567 (1975) as it applies to the Inverness Forest Improvement District. The special district, limited by the bond election proposition submitted, may not acquire a contractual right to purchase a percentage of capacity in a regional system. However, the special district, in its discretion, may use bond proceeds to purchase an undivided, legal interest in a regional system. The special district may contract with a "district" for the operation of its portion of the regional system under Chapter 25 of the Water Code.

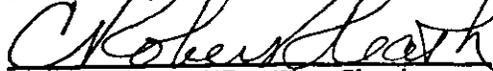
Very truly yours,


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APPROVED:


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