



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

November 13, 1989

Honorable Mark W. Stiles  
Chairman  
County Affairs Committee  
House of Representatives  
P. O. Box 2910  
Austin, Texas 78768-2910

LO-89-94

Dear Representative Stiles:

You inform us that in 1981-82 a fresh water supply district applied for and received a grant from the United States Environmental Protection Agency for the purpose of installing a sewer system in a town located within the district's boundaries. The district was required to provide certain matching funds. The voters of the district approved a ballot proposition in December 1982, authorizing the district's governing body to issue and sell bonds in an amount of \$450,000. Because certain parts of the proposed project later were deemed to be ineligible to receive EPA funds, the district was required to provide additional funds of approximately \$230,000. The subsequent bond election to authorize the district's governing body to issue additional bonds in that amount was defeated. Thus, the bonds in the amount of \$450,000 that were authorized were never issued. We understand that the district then failed to receive the EPA grant for which it applied in 1981.

The district recently obtained a different grant, this time from the United States Department of Commerce, for \$400,000 for the purpose of constructing the same sewer system, and again the district is required to provide matching funds, this time in the amount of \$532,000. You ask whether the district is authorized to issue and sell the bonds that the district's governing body was authorized to issue and sell in 1982, or whether the district's governing body is required to seek voter approval again.

Fresh Water Supply Districts are governed by chapter 53 of the Water Code. The code authorizes a district to issue bonds secured either by ad valorem taxes, Water Code § 53.171, or by a combination of ad valorem taxes and revenue, *id.* § 53.182, but only after the issuance of such bonds is approved by a majority of the electors of the

Honorable Mark W. Stiles

November 13, 1989

Page 2

district who vote in an election held for that purpose. Id. §§ 53.171(b), 53.183. The governing body of the district is required to order the holding of such an election and give proper notice of the election, setting forth the proposition to be voted on. Water Code §§ 53.172, 53.173.

You have not included with your request for an opinion a copy of either the order calling the election, the election notice, or the proposition voted on and approved by the voters in 1982. For purposes of this opinion, we will assume that the district complied with all of the statutory requirements for the process set forth in the code up to the time that it was empowered to make an order directing the issuance of the bonds. After this point, the governing body took no action; no order was issued and no bonds were sold. You wish to know whether the bonds may now be issued and sold after a delay of seven years.

No section of the code addresses whether bonds approved for a specific purpose must be issued and sold within a certain time. Generally, the date of the issuance of bonds, following an approving vote of a majority of the electorate, is primarily a matter for the decision of the governing body; its determination is final and conclusive in the absence of arbitrary action or fraud. City of Houston v. McCraw, 113 S.W.2d 1215 (Tex. 1938); Amstater v. Andreas, 273 S.W.2d 95 (Tex. Civ. App. - El Paso 1954, writ ref'd n.r.e.). A county or municipality, when authorized by an election to issue bonds, may issue them as needed within a reasonable time. Cohen v. City of Houston, 176 S.W. 809 (Tex. Civ. App. - Galveston 1915, writ ref'd); Fleming-Stitzer Rd. Bldg. Co. v. Chastain, 241 S.W. 619 (Tex. Civ. App. - Fort Worth 1922, no writ).

In Fleming-Stitzer, the court approved the selling of bonds one year after such issuance and sale had been approved by the voters. In that case, the court relied specifically on an out-of-state case in which a delay of five years was held not to be unreasonable in light of the circumstances shown. In Cohen, the court approved an installment issuance and sale of bonds over a period of five years. In City of Austin v. Valle, 71 S.W. 414, 417 (Tex. Civ. App. 1902, no writ), the court of appeals approved the issuance and sale of bonds over a five-year period and declared:

We do not hold that the voters of a city could give their consent to the issue of an unlimited amount of bonds, and that the council might at any time thereafter act on such consent and issue bonds up to the limit

Honorable Mark W. Stiles

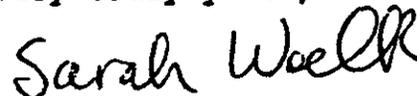
November 13, 1989

Page 3

of the taxable values of the city. But we believe that when a large public enterprise is contemplated, which will require several years for its completion, the people, by an election, may authorize their council to issue bonds for the purpose, and that the bonds need not be issued at one time, but as the demands of the work may require.  
(Emphasis added.)

Whether a delay of any specified period of time in the issuance and sale of bonds by a fresh water supply district after such has been approved by the voters is unreasonable is a question of fact, which we are not empowered to determine in the opinion process. We do not know whether there is any language in either the order calling the election or the proposition voted on and approved by the voters that would have the effect of imposing a deadline by which time the governing body of the district would have had to issue and sell the bonds of limiting the expenditure of the bonds only to a project co-funded by that specific EPA grant, or of imposing any other applicable limitation. Absent any such limiting language, we cannot determine as a matter of law that a delay of seven years in the issuance and sale of such bonds is unreasonable. We note that these bonds should be submitted for approval to the bond division of the attorney general's office.

Very truly yours,



Sarah Woelk, Chief  
Letter Opinion Section



Rick Gilpin, Chairman  
Opinion Committee

Prepared by: Jim Moellinger

APPROVED: OPINION COMMITTEE

SW/RG/JM/mc

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