



State Representative
Steve Holzhauser

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AUG 12 1997

Opinion Committee

August 5, 1997

FILE # ML-39712-97
I.D. # 39712

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711

RA-976

Re: Attorney General Opinion No. DM-444

Dear General Morales:

The purpose of this letter is to request a clarification or supplemental opinion with regard to Opinion No. DM-444, relating to the question of whether New Braunfels Utilities (NBU) is an agent of the City of New Braunfels and related questions.

Municipally-owned public utilities (MOUs) have played an important part in providing services to the citizens of Texas, not only within the city owning and operating these systems, but also in the other cities and unincorporated areas served by MOUs. Opinion No. DM-444 leaves the inference that MOU property, purchased with utility system revenue, could be used for other [non-utility] municipal purposes or sold without compensating the ratepayers, inside and outside the city, who paid for and may be reliant on that property.

While Opinion No. DM-444 states that Rep. Kuempel (who requested the opinion) did "not indicate that the property was purchased using bond proceeds or if it is part of the utility system," the opinion concludes "that the city may use the property at issue for a city library if it wishes, or sell the property if it wishes, even if the city's use of the property is contrary to NBU's desires." The opinion is silent as to whether the city is required to repay the ratepayers, both inside and outside the city, for the value of the property paid for by such ratepayers.

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This leaves the question with respect to which I would request your clarification or opinion:

Can property paid for by revenues of a municipal utility system under V.T.C.S. articles 111-1118, or by bonds payable solely from such revenues, be diverted to other uses or sold by the city council of such city without compensation to the utility system and the ratepayers, inside and outside the city, who paid for the property?

Thank you for your considering my request.

Sincerely,

A handwritten signature in cursive script that reads "Steve Holzheuser".

Steve Holzheuser
Chair, House Committee on
Energy Resources

SH/mw