



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Ms. Michelle Darilek
Jackson County Auditor
411 North Wells, Room 201
Edna, Texas 77957

Opinion No. KP-0262

Re: Whether the Jackson County Navigation District may require an easement for new and existing aerial utility lines which cross over its boundaries (RQ-0268-KP)

Dear Ms. Darilek:

You ask whether the Jackson County Navigation District (the “District”) may require an easement for new and existing aerial utility lines which cross over its boundaries.¹ You state that the District was established by an election of county voters under article 8198 of Vernon’s Revised Civil Statutes.² Request Letter at 1. You inform us that the District purchased a tract of submerged land from the State consisting of portions of the Lavaca River and the Navidad River. *Id.* Quoting from the patent deed,³ you state that the property was “sold for navigation purposes as stated in Article 8225, Vernon’s Civil Statutes, and that the provisions of said Article, and rights, privileges and limitations described therein are incorporated into this Patent by reference the same as if they were specifically set out” in the patent.⁴ *Id.*

You do not provide a copy of the patent, and in any event, this office generally does not construe the terms of a particular transaction. *See* Tex. Att’y Gen. Op. No. KP-0041 (2015) at 4 (“This office does not construe particular contracts or contract provisions.”). However, the State may convey its full interest in land, minus minerals, to a navigation district under former article 8225. *See Tex. Parks & Wildlife Dep’t v. Champlin Petroleum Co.*, 616 S.W.2d 668, 672 (Tex.

¹*See* Letter from Ms. Michelle Darilek, Jackson Cty. Auditor, to Honorable Ken Paxton, Tex. Att’y Gen. at 1–2 (Jan. 31, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²Article 8198 was repealed with the enactment of the Texas Water Code in 1971. *See* Act of Mar. 29, 1971, 62d Leg., R.S., ch. 58, §§ 1–2, 1971 Tex. Gen. Laws 110, 587, 660 (“1971 Act”); *see* TEX. WATER CODE § 61.022 (current version).

³A land patent “is an instrument by which the State conveys land to a private person.” *Galan Family Tr. v. State*, No. 03-15-00816-CV, 2017 WL 744250, at *1 n.1 (Tex. App.—Austin Feb. 24, 2017, pet. denied) (citing Black’s Law Dictionary 1300 (10th ed. 2014); *La. Pac. Corp. v. Holmes*, 94 S.W.3d 834, 837 (Tex. App.—San Antonio 2002, pet. denied) (referring to an instrument conveying property from the State to an individual as a “patent deed”).

⁴Article 8225 was also repealed by the 1971 Act enacting the Water Code. *See* Act of Mar. 29, 1971, 62d Leg., R.S., ch. 58, §§ 1–2, 1971 Tex. Gen. Laws 110, 592–94, 660; *see* TEX. WATER CODE §§ 61.111, .115–.117 (current version).

Civ. App.—Corpus Christi 1981, writ ref'd n.r.e.) (holding that article 8225, “when interpreted in its entirety, allows the State of Texas to convey lands by patent in fee simple (except minerals) to any navigation district”). “Fee simple” generally means the full bundle of property ownership rights, including the right to dispose of or grant an interest in the property. *See Hawkins v. Ehler*, 100 S.W.3d 534, 548 (Tex. App.—Fort Worth 2003, no pet.) (“Fee simple title is an estate over which the owner has unlimited power of disposition in perpetuity without condition or limitation.”); *Calhoun v. Killian*, 888 S.W.2d 51, 55 (Tex. App.—Tyler 1994, writ denied) (stating that “a fee simple absolute constitutes the full panoply of rights in real property”). Once the State has conveyed fee simple title to submerged lands, the State may not thereafter grant an easement over the same lands. *See First Am. Title Ins. Co. v. Adams*, 829 S.W.2d 356, 363–64 (Tex. App.—Corpus Christi 1992, writ denied) (holding that easement granted by the State in 1947 could not affect submerged land conveyed in fee simple in 1931). One of the incidents of property ownership is the general right to convey a property interest in the nature of an easement.⁵ *See Drye v. Eagle Rock Ranch, Inc.*, 364 S.W.2d 196, 202 (Tex. 1962) (holding that only the owner of land may create an easement). However, a navigation district may exercise any property ownership rights it may possess only within the bounds of its constitutional and statutory authority. *Natland Corp. v. Baker’s Port, Inc.*, 865 S.W.2d 52, 62 (Tex. App.—Corpus Christi 1993, writ denied) (stating “it is axiomatic that [a navigation district can only use its] land in accordance with the laws governing navigation districts”).

A navigation district is a special purpose district and, as such, “has only those powers expressly delegated to it by statute or by the clear implication of its express powers.” Tex. Att’y Gen. Op. No. GA-0905 (2012) at 2; *see also Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940). Thus, a navigation district’s authority to grant an easement must “be considered in conjunction with the . . . statutory provisions establishing the District’s limited purpose: navigation.” *Chambers-Liberty Ctys. Navigation Dist. v. State*, 62 Tex. Sup. Ct. J. 969, 2019 WL 2063575, at *9 (May 10, 2019).

Navigation districts are governed by chapters 60 through 63 of the Water Code. Chapter 60 contains general provisions applicable to navigation districts. *See* TEX. WATER CODE §§ 60.002–.564. Chapter 61 concerns navigation districts created under article III, section 52 of the Texas Constitution. *See id.* §§ 61.001–.239. Chapter 62 concerns districts operating under article XVI, section 59. *See id.* §§ 62.001–.318. Chapter 63 concerns self-liquidating districts. *See id.* §§ 63.001–.379. A navigation district created under article III, section 52 may convert into a district operating under article XVI, section 59. *Id.* § 60.241.

The information you provided does not establish whether the navigation district was created or operates under article III, section 52 or article XVI, section 59 of the Constitution. The stated purpose of a district under either chapter 61 or 62 is to “improve rivers, bays, creeks, streams, and canals inside or adjacent to the district” and “construct and maintain canals and waterways to permit or aid navigation.” *Id.* §§ 61.111(1)–(2), 62.101. All navigation districts have contracting authority necessary or convenient to the operation or development of district

⁵*See Stephen F. Austin State Univ. v. Flynn*, 228 S.W.3d 653, 658 (Tex. 2007) (“An easement does not convey title to property. It is instead a nonpossessory interest that authorizes its holder to use the property for only particular purposes.” (citations and quotation marks omitted)).

waterways. *Id.* § 60.003. Thus, assuming the State's patent did not exclude or otherwise limit the power to grant easements, a navigation district may require an easement for new and existing aerial utility lines which cross over its boundaries, provided that doing so is consistent with the navigation district's constitutional and statutory purposes.

S U M M A R Y

Assuming that the patent by which the Jackson County Navigation District purchased submerged land from the State does not provide otherwise, the District may require an easement for new and existing aerial utility lines which cross over its boundaries, provided that doing so is consistent with the navigation district's constitutional and statutory purposes.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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