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January 10, 2001

FILE # ML-41837-00

RECEIVED   I.D. # 41837

Honorable John Cornyn
Texas Attorney General
Attention: Opinions Committee
P.O. Box 12548
Austin, TX 78711-2548

JAN 12 2001

OPINION COMMITTEE

RQ-0336 9

Re: **Construction of Tex. Loc. Gov. Code § 372.018(c) and Tex. Const. Art. 16 § 50**

Dear General Cornyn:

I write to request your opinion as to the scope and constitutionality of the referenced statute.

Background

Texas Local Government Code Chapter 372 (formerly V.A.C.S. Art. 1269j-4.12) authorizes the creation of "Public Improvement Districts" (hereafter "PID"). A PID is used to finance improved services or facilities, in a defined neighborhood, above and beyond the level that might otherwise be provided by local government, by collecting a payment from the properties within the PID that receive the benefit of the improvements. Tex. Loc. Gov. Code §§ 372.014 to 372-017. Moreover, a city may issue long or short term debt to fund improvements in the PID, and require that the PID assessments be the source of debt payment. Tex. Loc. Gov. Code §§ 372.023 to 372.029. In the event a landowner does not pay the PID assessment, the enforcement clause provides that the assessment -- together with interest, expenses of collection and reasonable attorney's fees --

> ". . . *is a first and prior lien against the property assessed, superior to all other liens and claims except liens and claims for state, county, school district, or municipality ad valorem taxes . . . and may be enforced by the governing body in the same manner that an ad valorem tax against real property may be enforced by the governing body . . . .*" Tex. Loc. Gov. Code § 372.018(C) [emphasis added]

The PID payment is called an "assessment" and not a "tax." Nonetheless, the Legislature has accorded the assessment the same superior status as an ad valorem tax lien, and mandates that ad valorem tax collection procedures be used.

The Texas Constitution explicitly states that a homestead is:

> ". . . *protected from forced sale, for all the payment of all debts except for the purchase money thereof . . . the taxes due thereon, or for work and materials used in constructing improvements thereon, . . .*" Tex. Const. Art. 16, § 50.
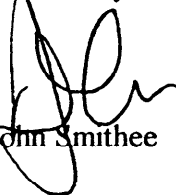
Questions

1.   Does the phrase, "*in the same manner as an ad valorem tax against real property*" mean that an official seeking to collect a delinquent PID assessment acts properly if he/she utilizes the same form notices, time lines, procedures, etc. as for the collection of delinquent taxes?

2.   Can a homestead be subjected to forced sale for nonpayment of a PID assessment, under the "taxes due thereon" clause of Art. 16, § 50?

3.   Can a homestead be subjected to forced sale for nonpayment of a PID assessment under the "improvements thereon" clause of Art. 16 § 50? (That is, does a city's public adoption of the annual PID assessment and service plan, combined with a landowner's written acknowledgment of the PID when closing on the purchase of land, create a contract in writing for "improvements thereon"?

It is my understanding that one of the reasons for creating the PID concept (superior lien enforceable like a tax) was to assure a more reliable and stable revenue stream for improvement projects that landowners and cities would facilitate through the PID. Therefore, it is imperative that cities know the "collectability" of a PID assessment, before issuing debt because such will affect the bond rating and municipal budget. Accordingly, the three questions presented are very significant.

I would appreciate receiving your guidance on these questions. If you need further background information or details about the PID that gave rise to these questions, please feel free to directly contact either Mr. Dean Frigo, Finance Director for the City of Amarillo, or Mr. Marcus Norris, the City Attorney.

Yours very truly,

John Smithee