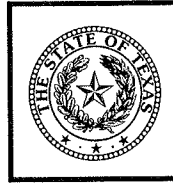
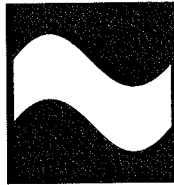


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**OPINION COMMITTEE**



FILE # ML-46951-12  
I.D. # 46951

**ANGELINA & NECHES RIVER AUTHORITY**

February 8, 2012

**RQ-1041-GA**

The Honorable Gregg Abbott  
Attorney General  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

Re: Opinion Relating to the applicability of Texas Water Code, Chapter 30 and its Superiority over the Texas Government Code § 1502.55 Relating to Regional Waste Disposal

General Abbott:

As President of the Board of Directors of the Angelina & Neches River Authority [ANRA], I am writing to request an opinion on the application of Texas Water Code Chapter 30 and its relationship, and/or superiority, to Texas Government Code §1502.55.

ANRA is in negotiations with the City of Huntington [City] regarding the purchase of the City's sewage collection system and treatment plant. The City wishes to sell these assets to ANRA and have ANRA operate and maintain the sewage treatment and collection system. The City has expressed concerns that §1502.55 requires that local election be held whereby the sale of the treatment plant and the collection system is approved, or rejected, by the voters. ANRA takes the position that Chapter 30 of the Water Code provides for the sale of the treatment plant and systems to ANRA. As this issue has not been resolved between ANRA and the City, both the City and ANRA request an opinion from the Attorney General on whether a local election is needed to approve the sale of the City's sewage treatment plant and collection system.

Section 1502.055 of the Government Code relates to the necessity of an election in order for a municipality to sell a utility system, park, or pool. This section requires the municipality to hold a public election whereby voters must authorize by a majority vote the sale of the subject utility. "Utility system" is defined under Section 1502.001(3) as an electric, water, sewer, solid waste disposal, drainage utility, or natural gas system. The term also includes one or more combined systems. "Combined system" means any combination of one or more of the following: electric system; a water system; a sewer system; a solid waste disposal system; a drainage utility system; and, a natural gas system. As such the treatment plant and the sewage collection system would appear to be a "Utility System", and to sell it would require a local election. Reading further into the section we find no further guidance regarding the instant issue.

ANRA takes the position that Chapter 30 of the Water Code Controls. Chapter 30 of the Water Code provides for regional waste disposal in an effort to improve water quality and management throughout the State of Texas. ANRA is tasked with the management, conservation and quality of water within its territorial boundaries. Section 30.021 provides that a *district* may acquire, construct, improve, enlarge, extend, repair, operate, and maintain one or more *disposal systems*. A "District" is any district or authority created and existing under Article XVI, Section 59 or Article II, Section 52 of the Texas Constitution, including any river authority. Therefore ANRA is included within the definition of "District". See TEX. WATER CODE ANN. §30.003(2). "Disposal System" means any system for disposing of waste, including *sewer systems and treatment facilities*. See TEX. WATER CODE ANN. §30.003(10). "Sewer System" consist of pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste. See TEX. WATER CODE ANN. §30.003(8). "Treatment Facility" means any devices and systems used in the storage, treatment, recycling and reclamation of waste...including intercepting sewers, outfall sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations; ... works, including sites therefor and acquisition of the land that will be part of or used in connection with the treatment process or is used for the ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste. See TEX. WATER CODE ANN. §30.003(9). "Waste" means sewage, industrial waste, municipal waste. See TEX. WATER CODE ANN. §30.003(6). As such the City's sewer system and treatment facilities constitute a "Disposal System" for purposes of this Chapter. ANRA, as a District, seeks to acquire these systems.

Pursuant to the Water Code a river authority may make contracts authorized by this [Chapter 30] with any person, including a *public agency*, which is situated within the boundaries of the river basin controlled by the authority. See TEX. WATER CODE ANN. §30.026. "Public Agency" is defined as any district, *city*, or other political subdivision or agency of the state which has the power to own and operate waste collection, transportation, treatment, or disposal facilities or systems. See TEX. WATER CODE ANN. §30.003(3). "City" means any incorporated city or town whether operating under general law or under home-rule. See TEX. WATER CODE ANN. §30.003(1). As the City of Huntington is a general law city within the boundaries of ANRA's controlled river basin, it is a "Public Agency" within the meaning of Chapter 30, and ANRA may make all contracts with the City which are authorized by Chapter 30.

Section 30.028 of the Water Code provides for the contract provisions authorized by Chapter 30. See TEX. WATER CODE ANN. §30.028. This section specifically states that the contract may provide for the *sale* or lease to, or use by, a *district of all or part of a disposal system* owned or to be acquired by the *public agency*. See TEX. WATER CODE ANN. §30.028 (emphasis added). As noted above, the definitions of district and public agency correspond respectively to ANRA and the City. Disposal system incorporates the sewage and treatment facilities. As such, Chapter 30 authorizes the City to sell its entire disposal system to ANRA.

Lastly, it is ANRA's position that no election is required for the rights and powers granted to ANRA and the City under Chapter 30. Section 30.035 states that no election is required for the

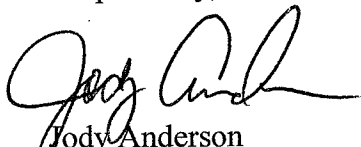
exercise of any power under this chapter except for the tax levy as provided by Section 30.030(c) of this code. *See* TEX. WATER CODE ANN. §30.035. As the power for ANRA to acquire, and the City to sell, the subject disposal system §30.035 trumps Texas Government Code §1502.55's requirement for a local election.

While Texas Government Code §1502.55 serves a purpose in preventing a city of divesting its infrastructure to a private enterprise or individual, Chapter 30 provides for the cooperation among public agencies to collect and treat waste within the state to prevent and control pollution. *See* TEX. WATER CODE ANN. §30.002. This section recognizes the need for public entities to work together for the effective treatment of waste and further recognizes that certain public agencies have expertise that may create efficiencies in these areas.

The Angelina & Neches River Authority and the City of Huntington request that General Abbott issue an opinion on whether a local election is needed pursuant to Texas Government Code §1502.55, or whether a local election is not needed pursuant to Texas Water Code §30.035.

If I may be of any further service, please contact me at 936-632-4481.

Respectfully,

A handwritten signature in black ink, appearing to read "Jody Anderson", written in a cursive style.

Jody Anderson  
President, Board of Directors