

County of Jackson

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RECEIVED

JAN 31 2019

OPINION COMMITTEE

VIA E-MAIL

Opinion.committee@oag.texas.gov

January 31, 2019

Office of the Attorney General
Attention Opinion Committee
P O Box 12548
Austin, Texas 78711-2548

FILE # ML-48493-19
I.D. # 48493

RQ-0268-KP

RE: Attorney General Opinion Request
Navigation District Easements

Dear: Attorney General Opinion Committee:

Pursuant to 402.042 and 402.043 of the Texas Government Code, I respectfully request your formal written opinion on the following question:

May Jackson County Navigation District (JCND) require an easement for new and existing aerial utility lines which cross over its boundaries?

BACKGROUND

Jackson County Navigation District was established in 1951 by a duly held election of the voters of Jackson County under Article 8198 of Vernon's Revised Civil Statutes to "improve rivers, bays, creeks, streams and canals ... and construct and maintain canals and waterways to permit navigation, or in aid thereof...." On October 13, 1966, JCND purchased a tract of submerged land from the State of Texas consisting of a portion of the Lavaca River and a portion of the Navidad River. As stated in the deed, the river 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 in to this Patent by reference the same as if they were specifically set out herein." JCND asserts that this conveyance bestowed all legal property rights to the district, rights usually held by the State of Texas for submerged lands.

As per the Texas Natural Resource Code, Sec. 51.291, the State of Texas has the right to "execute grants of easements or other interests in property for rights-of-way or access across, through and under unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, the state-owned riverbeds and beds of navigable

streams in the public domain..." This section specifically includes easements for telephone, telegraph, electric transmission, and power lines in addition to pipelines, canals, roads as well as "any other purpose in the best interest of the state."

Furthermore, though the Texas Water Code does not list *specific* examples where easements are to be granted as the Texas Natural Resource Code does in Sec. 51.291, it does give JCND statutory authority in Sec. 62.107 to "lease and grant easements on any part of the acquired land to any person and may charge for the lease or easement reasonable tolls, rents, fees, or other charges. The lease or easement may be on terms and conditions considered appropriate or advantageous to the district." Pursuant to 60.043 of the Water Code, Navigation Districts have "absolute control over channels or other waterways" within its boundaries and Navigation Districts "may prevent or remove any obstructions of these facilities and fix proper fees, charges, and tolls for their use."

Thank you for your consideration of this request and please do not hesitate to contact me or my office if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Darilek".

Michelle Darilek, CPA
Jackson County Auditor

CC: Gary Olson
Jackson County Navigation District Chair