



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Forrester Hancock  
Criminal District Attorney  
Waxahachie, Texas

Dear Sir:

Opinion Number 0-4039  
Re: Authority of a Home Rule  
city to issue self-liqui-  
dating bonds for the con-  
struction or purchase of  
a telephone system.

We have your letter requesting our opinion on the  
question —

"May a home rule city issue self-liqui-  
dating bonds for the construction or pur-  
chase of a telephone system?"

We assume from your question that it contemplates  
the issuance of revenue bonds, to be paid from the proceeds  
or net income of such system.

Article 1111 of Vernon's Annotated Civil Statutes  
is a general law and reads as follows:

"All cities and towns including Home Rule  
Cities operating under this title shall have  
power to build and purchase, to mortgage and  
encumber their light systems, water systems,  
sewer systems, or sanitary disposal equipment  
and appliances, or natural gas systems, parks  
and/or swimming pools, either, or all, and  
the franchise and income thereof and every-  
thing pertaining thereto acquired or to be ac-  
quired and to evidence the obligation therefor  
by the issuance of bonds, notes or warrants,  
and to secure the payment of funds to purchase  
same; or to purchase additional water powers,  
riparian rights, or to build, improve, enlarge,

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extend or repair such systems, or any one of them, including the purchase of equipment, and appliances for the sanitary disposal of excreta and effal, and as additional security therefor, by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereunder, a franchise to operate the systems and properties so purchased for a term of not over twenty (20) years after purchase, subject to all laws regulating same then in force. No such obligation of any such system shall ever be a debt of such city or town, but solely a charge upon the properties of the system so encumbered, and shall never be reckoned in determining the power of any such city or town to issue any bonds for any purpose authorized by law."

Home Rule cities find their source and authority in Section 5, Article 11 of the Constitution and Article 1165 of Vernon's Annotated Civil Statutes, both of which read identically. Article 1165 is the Enabling Act, enacted by the Legislature subsequent to the adoption of Section 5, Article 11, as an amendment to the Texas Constitution. Said article reads as follows:

"Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess

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and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent thereon; and provided thrther, that no city charter shall be altered, amended or repealed oftener than every two years."

Article 1175 is a general law enumerating certain powers that may be exercised by Home Rule cities which have adopted a charter or the amendment above quoted. This article reads, in part, as follows:

"Cities adopting the charter or amendment hereunder shall have full power of local self-government. Among the other powers that may be exercised by any such city, the following are hereby enumerated for greater certainty:  
\* \* \*

"Sec. 10. The power to control and manage the finances of any such city; to prescribe its fiscal year and fiscal arrangement; the power to issue bonds upon the credit of the city for the purpose of making permanent public improvements or for other public purposes in the amount and to the extent provided by such charter and consistent with the Constitution of this State; \* \* \*.

"Sec. 13. To buy, own, construct within or without the city limits and to maintain and operate a system or systems of gas or electric lighting plants, telephones, street railways, sewerage plants, fertilizing plants, abattoirs, municipal railway terminals, docks, wharves, ferries, ferry-landings, loading and unloading devices as shipping facilities, or any other public service or public utility, and to demand and receive compensation for service furnished for private purposes or otherwise, and to exercise the right of eminent domain as hereinafter provided for the appropriation of land, rights of way or anything whatsoever that may be proper

and necessary to efficiently carry out said object. Any city shall have power to condemn the property of any person, firm or corporation now conducting any such business, and for the purpose of operating and maintaining any such public utilities and for the purpose of distributing such service throughout the city or any portion thereof; provided that any city may adopt by its charter any such rules and regulations as it may deem advisable for the acquiring and operation of any such public utilities." (Underscoring ours).

It will be seen from a reading of Articles 1111 and 1175, above quoted, that by a general enactment, Home Rule cities are given the express power to do the various things enumerated in each of the two statutes. Under the general law a Home Rule city may issue revenue bonds for the purposes enumerated in Article 1111. This was an authority granted to both general law cities and Home Rule cities. Under the terms of Article 1175, a Home Rule city, by adopting charter provisions authorizing it to acquire the various public utilities enumerated under Section 13 thereof, could under Section 10 of Article 1175, above quoted, issue bonds for such purposes.

Section 33 of Article 1175 reads as follows:

"Whenever any city may determine to acquire any public utility using and occupying the streets, alleys and avenues as hereinabove provided, and it shall be necessary to condemn the said public utility, the city may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor by issuing bonds, notes or other evidences of indebtedness, and shall secure the same by fixing a lien upon the said properties constituting the said public utility so acquired by condemnation, purchase or otherwise; said security shall apply alone to said property so pledged; and such further regulations may be provided by any charter for the proper financing or raising the revenue necessary for obtaining any public utility and providing for the fixing of said security." (Underscoring ours).

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The Legislature of the State has all power to enact laws except as may be inhibited by the Constitution of the State or Nation. It does not have to look to the Constitution for a grant of power to enact laws but only to see if it is inhibited from acting. And a city does not, since the adoption of Section 5, Article 11, longer have to look to the Legislature for a grant of power to act (this being given by the Constitution), but only look to Acts of the Legislature to see if it has placed any limitations on the power to act granted by Section 5 of Article 11. If the Legislature has placed no limitation on the power of a city to act and the provision is inconsistent with no provision of the Constitution or the general laws of the State, the power of the city is as general and broad as is the power of the Legislature to act. We no longer must look to the Legislature to grant to a city the power to amend its charter or to insert therein any given provision, but we only look to the Acts of the Legislature to see if that body by any provision adopted has placed any limitation on the power of a city to act in a given matter. If therein we find no limitation placed on a city to amend its charter in any given particular, and such provision is inconsistent with no provision of the Constitution and no general law of the State, the city has the authority to so amend its charter and adopt such provisions without any grant of power further than that conferred by Section 5, Article 11 of the Constitution. See the case of *Legois v. State*, 190 S. W. 724.

It appears therefore that there are no limitations in the general laws which would inhibit a Home Rule city from issuing revenue or self-liquidating bonds to purchase a telephone system. On the contrary it appears that Home Rule cities have the express authority by general law to acquire such a system if such a provision has been adopted in the charter of such city.

We are, therefore, of the opinion that if a city has adopted a charter provision authorizing the acquisition of such a system and has authorized the issuance of revenue or self-liquidating bonds to purchase same, that it would not be inconsistent with the Constitution or general laws of this State.

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Trusting that the foregoing fully answers your inquiry, we are

APPROVED OCT 16, 1941

*George S. Allen*  
FIRST ASSISTANT  
ATTORNEY GENERAL

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Clarence E. Crowe*  
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