



THE ATTORNEY GENERAL
OF THE STATE OF TEXAS

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AUSTIN, TEXAS 78711

February 15, 1972

Honorable Hugh C. Yantis, Jr.
Executive Director
Texas Water Quality Board
Lowich Building
Austin, Texas 78701

Opinion No. M-1070

Re: Whether a non-profit private corporation created under Article 1434a, V.C.S., can be granted State of Texas assistance for the erection of a sewage plant pursuant to Subchapter I, of the Texas Water Code.

Dear Mr. Yantis:

You have requested our opinion as to whether Northwest Houston Water Supply Corporation, which was organized under Article 1434a, Vernon's Civil Statutes, constitutes a "political subdivision" for the purpose of receiving State of Texas assistance or loans under Subchapter I, Texas Water Code (Sections 21.601 through 21.612, inclusive).

Your request further states:

"Northwest Houston Water Supply Corporation is a nonprofit corporation created by special request of the City of Houston. Its directors are appointed by the Mayor of Houston; all stock in the corporation is held by the Mayor; the city guarantees payment of interest and sinking fund on all revenue bonds issued by the corporation; all improvements become the property of the city as soon as constructed. The Internal Revenue Service has ruled that the interest on the bonds as well as any income received by the corporation is income tax free.

". . .

"The City of Houston contracted with the Northwest Houston Water Supply Corporation for that corporation to act as the city's agent in all matters connected with the providing of adequate water and public sanitation facilities for the unincorporated Acres Homes Area, which consists

of approximately five thousand acres and a population of forty to fifty thousand individuals.

"With this fact situation in mind, your opinion is requested with reference to the following question:

Does the corporation, by the nature of its relationship with the city, qualify as the recipient of the financial assistance as provided by Subchapter I of the Texas Water Code?"

We answer the question in the negative.

This private non-profit water supply corporation known as Northwest Houston Water Supply Corporation is not a "political subdivision" under the Texas Water Code. Section 21.602(5) of the Water Code defines a political subdivision as follows:

"'Political subdivision' means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, and including any interstate compact commission to which the state is a party."

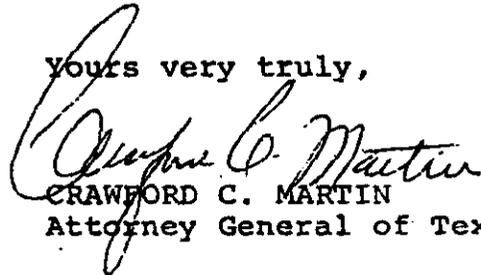
Article III, Section 49-d-1, Constitution of Texas, authorizes the Legislature to provide grants and loans for water quality enhancement purposes only "to political subdivisions or bodies politic and corporate of the State of Texas" Political subdivisions are similarly defined in the Texas Water Code, Section 11.001. This is further emphasized by holdings that such corporations as here involved are "private" but quasi-public in nature, but they do not constitute "political subdivisions" of the state. Tarrant County W.S.C. v. Hurst-Eules Bedford I.S.D., 391 S.W.2d 192, (Tex.Civ.App. 1965, error ref. n.r.e.); Cedar Park W.S.C. v. Leander I.S.D., 469 S.W.2d 19 (Tex.Civ.App. 1971, error granted on other grounds and under submission since December 8, 1971). See also Attorney General Opinion No. 0-3433 (1941).

We have heretofore held that an incorporated city, as a political subdivision, may contract with a profit or non-profit corporation to perform waste disposal services, but this does not contemplate that the City in so doing delegates any of its sovereign powers. See Attorney General Opinion No. M-693 (1970).

S U M M A R Y

A private nonprofit water supply corporation created under Article 1434a, Vernon's Civil Statutes of Texas, is not a "political subdivision" under Section 11.001 or 21.602(5) of the Texas Water Code, and cannot qualify as the recipient of the financial assistance provided by Subchapter I of the Texas Water Code.

Yours very truly,


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APPROVED:
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