THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

April 25, 1975

The Honorable Tom Craddick
Chairman
Natural Resources Committee
State of Texas House of Representatives
Box 2910
Austin, Texas 78767

Letter Advisory No. 98

Re: Constitutionality of House Bill 142 which would change the method of selection of the San Antonio City Public Service Board members.

Dear Chairman Craddick:

You have requested our opinion concerning whether House Bill 142 as applied to the City Public Service Board of San Antonio would violate the state or federal constitutional provisions regarding the impairment of contractual obligations. You state in your request that House Bill 142 would change the method of selection of Board members from that prescribed by the various trust indentures pertinent to the Board's operation.

It is well established that changes in the terms of bond issues which affect the economic rights of bondholders are unconstitutional under article 1, section 16 of the Texas Constitution as impairing the obligations of contracts. City of Aransas Pass v. Keeling, 247 S. W. 818 (Tex. Sup. 1923); City of Austin v. Cahill, 88 S. W. 542 (Tex. Sup. 1905); Burns v. Dilley County Line Independent School District, 295 S. W. 1091 (Tex. Comm. 1927 jdmt. adopted); Atwood v. Kelly, 127 S. W. 2d 555 (Tex. Civ. App. --Dallas 1939, no writ).

However, the Texas cases indicate that many alterations of the subject matter of contracts do not result in an impairment of their obligations. The boundaries of a district may be altered so long as there is no impairment of the district's economic obligations. El Dorado Independent School District v. Tisdale, 3 S. W. 2d 420 (Tex. Comm. 1928, jdmt. adopted). Land within a district may be annexed and its indebtedness assumed by a home rule city. Wheeler v. City of Brownsville, 220 S. W. 2d

457 (Tex. Sup. 1949). See also, City of Pelly v. Harris County Water Control and Improvement District No. 7, 198 S. W. 2d 450 (Tex. Sup. 1946). A statute creating a fund for the payment of bonded indebtedness may be repealed if it is substituted by "something of equal efficacy." City of Aransas Pass v. Keeling, supra. A contractual remedy may be altered if it is not obliterated. Kelley v. Republic Building and Loan Association, 34 S. W. 2d 924 (Tex. Civ. App. --Dallas 1930, no writ). In Kelley the court held that whether a statute impairs the obligations of contract generally depends on its effect.

In light of the foregoing authorities, it is our opinion that a statute which alters the method of selection of Public Service Board members is not violative of article 1, section 16 of the Texas Constitution so long as the economic obligations of the Board are not impaired.

We do not believe that a change in the method of selection of Board members would violate article 1, section 10 of the Federal Constitution, which also prohibits impairment of the obligations of contract.

In a case involving a change in the composition of a board of commissioners of a drainage district, Rorick v. Board of Commissioners of Everglades Drainage District, 57 F. 2d 1048 (N. D. Fla. 1932), the court sustained the alteration, stating:

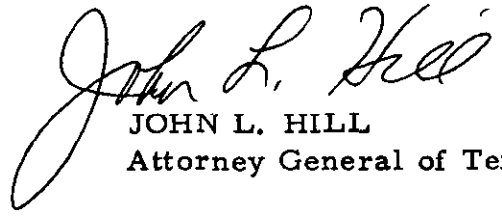
> The district remains, with officers empowered to perform all its duties toward bondholders. Neither the resources nor the remedy for the payment of plaintiffs' bonds are affected within the purview of the contract clause of the Constitution. A mere change in personnel of a public board or body is not usually regarded as an impairment of contract obligations. 57 F. 2d at 1063.

The same conclusion was reached in Reppel v. Board of Liquidation, 11 F. S. 799 (E. D. La. 1935), and in State v. Walmsley, 162 So. 826 (Sup. La. 1935).

See also Graham v. Folsom, 200 U.S. 248 (1906), recognizing the power of the state to alter its political subdivisions so long as the economic obligations of contract are not impaired.

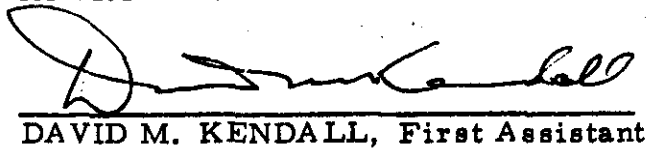
Consequently, it is our opinion that House Bill 142 may alter the method of selection of members of Public Service Boards so long as the economic obligations of the Board are not impaired by the proposed legislation.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant

C. ROBERT HEATH, Chairman
Opinion Committee

lg