



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

May 16, 1977

The Honorable Joe C. Hanna  
Committee on Energy Resources  
Texas House of Representatives  
Austin, Texas 78769

Letter Advisory No.142

Re: Constitutionality of  
sections 3(c)(4) and 48 of  
the Public Utility Regulatory  
Act, art. 1446c, V.T.C.S.

Dear Representative Hanna:

In connection with your consideration of House Bill 1160, you have requested our opinion concerning the constitutionality of sections 3(c)(4) and 48 of article 1446c, V.T.C.S. You have asked whether these provisions violate article 3, section 56 of the Texas Constitution which prohibits the enactment of certain local and special laws.

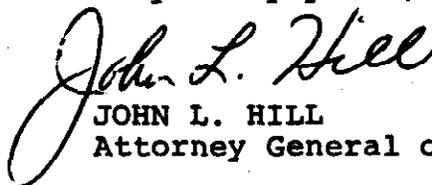
The question involving section 3(c)(4) is before the 53rd District Court in Travis County in City of Floresville v. Morris (No. 254,938) and City of San Antonio v. Morris (No. 254,939), and it is the policy of this office to decline to write on questions which are in litigation. E.g., Attorney General Opinion V-291 (1947).

Your remaining question asks if section 48, by effectively providing a lower utility rate for certain school districts and hospital districts, illegally discriminates between classes of users. Section 48 currently provides:

No payments made in lieu of taxes by a public utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a public utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the public utility is owned.

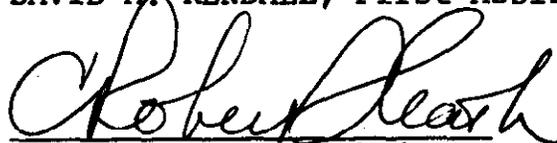
As a general matter consumers of utility service may be reasonably classified on the basis of the purpose for which the services are used. Gillam v. City of Fort Worth, 287 S.W.2d 494 (Tex. Civ. App. -- Fort Worth 1956, writ ref'd n.r.e.); Caldwell v. City of Abilene, 260 S.W.2d 712 (Tex. Civ. App. -- Eastland 1953, writ ref'd). In our view this particular type of statutory preference on behalf of certain school districts and hospital districts would be found to have a rational basis and thus would not constitute an unconstitutional discrimination. Letter Advisory No. 131 (1977). Accordingly, in our opinion section 48 of article 1446c would not be held to be arbitrary and would not be found to create an unconstitutional classification.

Very truly yours,

  
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Attorney General of Texas

APPROVED:

  
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Opinion Committee

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