



Office of the Attorney General  
State of Texas

September 15, 1992

DAN MORALES  
ATTORNEY GENERAL

Honorable Roman Martinez  
Chairman  
Committee on Labor  
and Employment Relations  
P. O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 92-49

Re: Whether the Port of Houston  
Authority of Harris County may purchase  
real property and facilities, thereby  
removing the property from the tax base  
and related question (RQ-391)

Dear Representative Martinez:

You ask two questions about the propriety of the Port of Houston Authority of Harris County ("the authority") purchasing real property. First, you ask whether the authority may purchase real property through a bidding process pursuant to bankruptcy proceedings and thereby remove that property from the tax base of certain taxing units. Second, you ask whether the authority may use tax supported funds for such a purpose. In answer to your first question, we conclude that the authority may purchase real property offered at a bankruptcy sale. We do not answer your second question, as it involves resolving questions of fact.

The authority is governed by several provisions of constitutional and statutory law: article XVI, section 59 of the Texas Constitution; applicable general law provisions in the Water Code; and the special acts enabling the authority. See, e.g., Water Code § 1.001(d); Acts 1957, 55th Leg., ch. 117, §§ 1(a), 2(a); Acts 1927, 40th Leg., 1st C.S., ch. 97, § 1, at 256-57; Attorney General Opinions JM-878 (1988); H-137 (1973). Except for those subchapters that expressly limit their application to navigation districts of a particular functional or population description, chapter 60 of the Water Code applies to all navigation districts.<sup>1</sup> Buchanan, *Texas Navigation*

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<sup>1</sup>Chapter 61 of the Water Code applies to navigation districts created under article III, § 52 of the Texas Constitution. Buchanan, *Texas Navigation Districts and Regional Planning in the Texas Gulf Coast Area*, 10 HOUS. L. REV. 533, 538 (1973). Because one of the authority's special enabling acts converted the authority to a navigation district operating under the provisions of article XVI, § 59 of the constitution, chapter 61 of the Water Code does not apply to the authority. See Acts 1957, 55th Leg., ch. 117, § 2(a). Chapter 63 of the Water Code applies to self-liquidating navigation districts,

*Districts and Regional Planning in the Texas Gulf Coast Area*, 10 HOUS. L. REV. 533, 538 (1973). Additionally, chapter 62 of the Water Code applies to navigation districts created under article XVI, section 59 of the Texas Constitution. *Id.* at 539-40. Accordingly, the provisions of chapters 60 and 62 of the Water Code govern the authority, in addition to the provisions in the authority's special enabling acts, and we must consider the statutes together.

As a threshold matter, therefore, we must consider how the provisions in the Water Code and the provisions in the special acts interact. In situations in which the provisions of the applicable general law and special law are consistent, the general law applies. Attorney General Opinion JM-827 (1987) at 2-3. However, if the provisions of the special law conflict with the provisions of the general law, the provisions of the special law generally control. *City of Piney Point Village v. Harris County*, 479 S.W.2d 358, 365 (Tex. Civ. App.--Houston [1st Dist.] 1972, writ ref'd n.r.e.). As regards your questions, we do not find any provisions in the applicable general law that conflict with the provisions of the authority's special enabling act.

Within the territory subject to its jurisdiction, a navigation district has broad authority to develop and maintain waterways and port facilities in aid of navigation. See Buchanan, *supra*, at 556. Included within the broad grant of authority given to a navigation district are express powers to purchase land and any type of structure or other facility "incidental to or useful in the operation or development of the district's ports and waterways or in aid of navigation and navigation-related commerce in the ports and on the waterways." Water Code § 60.101(a); see also Water Code §§ 62.107(a), 63.153(3), 63.155; Acts 1957, 55th Leg., ch. 117, § 1(a). We do not find any statute that limits the authority's purchasing power when, by purchasing a piece of property, the authority will remove the property from the tax base. Consequently, if the property at issue here is either "incidental to or useful in the operation or development of the district's ports and waterways or in aid of navigation and navigation-related commerce in the ports and on the waterways," then the authority is statutorily empowered to purchase the property. Because this committee cannot

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(footnote continued)

which includes all districts operating under article XVI, § 59 of the constitution that have "voted bonds but have not issued or disposed of the bonds." Buchanan, *supra*, at 540; see Water Code § 63.021(a). We are not informed whether the authority is a self-liquidating navigation district and therefore subject to the provisions of chapter 63 (where the provisions of chapter 63 are consistent with the provisions of the authority's special enabling act). However, the answers to your questions are the same under chapter 63 as under chapters 60 and 62. See generally Buchanan, *supra*, at 556, 564-65.

resolve factual issues in the opinion process, we cannot determine whether a particular purchase satisfies this statutory requirement.<sup>2</sup>

In regard to your second question, we are uncertain as to what you mean by "tax supported funds." We note that the commissioners court of the respective counties within a navigation district may levy an annual tax, the revenues of which must be used "for the maintenance, operation, and upkeep of the district." (*id.* § 62.160). Whether the purchase of the property at issue here will help to maintain, operate, and keep up the authority is a question of fact, the resolution of which is beyond the purview of this committee. Likewise, the authority may use the proceeds of tax bonds issued by the commissioners courts of its component counties to pay the "cost of proposed improvements, incidental expenses, and maintenance costs." Water Code § 62.191(a); *see id.* §§ 62.191 through 62.194, 63.281 through 63.282 (establishing process whereby commissioners courts of respective counties inside navigation district shall submit bond proposal for election and, if majority of electorate approves, issue tax bonds); Acts 1957, 55th Leg., ch. 117, § 2; Acts 1927, 40th Leg., 1st C.S., ch. 97, § 7. Whether this proposed purchase of real property is an improvement, an incidental expense, or a maintenance cost, within the context of section 62.191(a) of the Water Code, is a question of fact. Consequently, we cannot resolve your second question.<sup>3</sup>

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<sup>2</sup>Whether the authority is purchasing real property from private or governmental owners is inconsequential. *See Buchanan, supra*, at 564-65.

<sup>3</sup>If the authority cannot use tax monies, either from current taxes or tax bonds, it may be able to use other revenues to purchase the real property. We note that the authority must collect fees and charges for the use of any of its land, improvements, and facilities. Water Code § 60.103; Acts 1957, 55th Leg., ch. 117, § 1(b); *see Buchanan, supra*, at 558-61. The authority must use these fees and charges to pay "all expenses necessary to the operation and maintenance of the improvements and facilities, including the cost of the acquisition of properties and materials necessary to maintain the improvements and facilities in good condition and operating them efficiently, . . . and other expenses necessary to the efficient operation of the improvements and facilities." Water Code § 60.105(a)(1); Acts 1957, 55th Leg., ch. 117, § 1(b)(1). Finally, the authority may issue revenue bonds, secured by a pledge of future fees and charges, for purposes of acquiring land, improvements on or to the land, and structures. Water Code § 60.104(a), (b); Acts 1957, 55th Leg., ch. 117, § 1(c); *see Water Code* §§ 61.106(a), 60.331(2), (3), 60.338, 63.153(6), (8) (explaining use of revenue bonds). Of course, the authority only may acquire land, improvements, and structures if the property will be "incidental to or useful in the operation or development of the district's ports and waterways or in aid of navigation and navigation-related commerce in the ports and on the waterways." *Id.* § 60.101(a). Again, this committee cannot resolve in the opinion process whether the purchase is an expense necessary to operate and maintain the authority's improvements and facilities, or whether the property is incidental to or useful in the district's operation or development.

S U M M A R Y

As long as the Port of Houston Authority of Harris County desires to purchase property that will be incidental to or useful in the operation or development of the authority's ports and waterways or to aid navigation and navigation-related commerce, the applicable statutes authorize the authority to purchase the property. The fact that the authority's purchase will take the property out of the tax base is irrelevant. The question of whether the authority may use tax supported funds to purchase the property involves the resolution of fact issues, a task this committee cannot perform.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee