



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 17, 1995

Dr. James Corbin
Chair
Texas Antiquities Committee
P.O. Box 12276
Austin, Texas 78711-2276

Letter Opinion No. 95-011

Re: Whether the Fort Bend Flood Control Water Supply Corporation is a political subdivision and whether its development actions are subject to the Texas Antiquities Code (ID# 25694)

Dear Dr. Corbin:

The members of the Texas Antiquities Committee ask whether the Fort Bend Flood Control Water Supply Corporation is a political subdivision of the State of Texas, and whether the development actions of this entity are subject to compliance with the Texas Antiquities Code, Nat. Res. Code ch. 191. Section 191.092(a) of the Natural Resources Code provides as follows:

Sites, objects, buildings, artifacts, implements, and locations of historical, archeological, scientific, or educational interest . . . as well as archeological sites . . . that are located in, on, or under the surface of any land belonging to the State of Texas or to any county, city, or *political subdivision of the state* are state archeological landmarks and are eligible for designation. [Emphasis added.]

Landmarks described by section 191.092 "are the sole property of the State of Texas and may not be removed, altered, damaged, destroyed, salvaged, or excavated without a contract with or permit from the committee." *Id.* § 191.093. Accordingly, landmarks that are located in, on, or under land belonging to a political subdivision of the state are subject to section 191.093.

The Fort Bend Flood Control Water Supply Corporation is a nonprofit water supply corporation established pursuant to article 1434a, V.T.C.S.¹ A nonprofit water

¹Under article 1434a, a water supply corporation may be formed and chartered by the state "for the purpose of furnishing a water supply or sewer service, or both, to towns, cities, private corporations, [and] individuals, . . . and for the purpose of providing a flood control and drainage system for towns, cities, counties, other political subdivisions, private corporations, individuals, and other persons." V.T.C.S. art. 1434a, § 1; see *Tarrant County Water Supply Corp. v. Hurst-Eules-Bedford Indep. Sch. Dist.*, 391 S.W.2d 162 (Tex. Civ. App.—Fort Worth 1965, writ ref'd n.r.e.). The persons applying for a corporate charter "shall make application to the Secretary of State in the manner now provided by law for private corporations and in the name designated for such corporation shall use the words 'Water Supply Corporation.'" V.T.C.S. art. 1434a, § 3(a). The Texas Non-Profit Corporation Act, *id.* art. 1396-.01,

supply corporation created pursuant to that statute is not a political subdivision or a municipal or governmental agency. *See Tarrant County Water Supply Corp. v. Hurst-Euleless-Bedford Indep. Sch. Dist.*, 391 S.W.2d at 163 (Tex. Civ. App.--Fort Worth 1965, writ ref'd n.r.e.); Attorney General Opinion JM-596 (1986).

In the context of certain statutes concerning water projects, however, the legislature has expressly defined "political subdivision" to include nonprofit water supply corporations. For example, in chapter 52 of the Water Code, relating to underground water conservation districts, "political subdivision" means

a county, municipality, or other body politic or corporate of the state, including² a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, a state agency, and a *nonprofit water supply corporation* created under . . . [a]rticle 1434a, Vernon's Texas Civil Statutes

Water Code § 52.001(15)(emphasis added); *see also id.* §§ 15.001 ("political subdivision" for purposes of Texas water assistance program includes nonprofit water supply corporations), .731(4) ("political subdivision" for purposes of plumbing improvement loans includes certain nonprofit water supply corporations), 17.921(3) ("political subdivision" for purposes of assistance for water supply and sewer service projects includes nonprofit water supply corporations).

By expressly including nonprofit water supply corporations in the definitions of "political subdivision," the legislature enabled them to participate in particular water development programs. *See generally* Tex. Const. art. III, § 49-d-5 (authorizing legislature to extend to nonprofit water supply corporations benefits of water development programs established by various other constitutional provisions). The use of a specialized definition of "political subdivision" in particular statutes does not change the meaning of that term elsewhere. *See* Gov't Code § 311.011(common and technical usage of words in statutes).

(footnote continued)

applies to corporations created under article 1434a, V.T.C.S., "to the extent that it does not conflict" with the latter act. *Id.* art. 1434a, § 2(d); *see* Attorney General Opinion M-840 (1971). We have learned from the Statutory Filings Division of the Secretary of State's Office that the Fort Bend Flood Control Water Supply Corporation was incorporated under the Texas Non-Profit Corporation Act.

²The term "including" is one of enlargement, not limitation, and its use does not create a presumption that entities not enumerated in the definition are necessarily excluded. *See* Gov't Code § 312.001(19); Letter Opinion LO94- (ID# 25125) (1994). In considering whether the Fort Bend Flood Control Water Supply Corporation is a political subdivision as defined by section 191.003(4) of the Natural Resources Code, we do not rely on such a presumption, but on the decision in *Tarrant County Water Supply Corp. v. Hurst-Euleless-Bedford Indep. Sch. Dist.*, 391 S.W.2d 162 (Tex. Civ. App.--Fort Worth 1965, writ ref'd n.r.e.).

For the purposes of chapter 191 of the Natural Resources Code, a “political subdivision” is

a local governmental entity created and operating under the laws of this state, including a city, county, school district, or special district created under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution.³

Nat. Res. Code § 191.003(4) (footnote added). This definition does not expressly state that a nonprofit water supply corporation created under article 1434a, V.T.C.S., is a political subdivision. The legislature has not modified the decision in *Tarrant County Water Supply Corporation* for purposes of chapter 191 of the Natural Resources Code. Accordingly, the Fort Bend Flood Control Water Supply Corporation is not a “political subdivision” of the state within section 191.092 of the Natural Resources Code. The land it owns is not subject to the requirements of Natural Resources Code section 191.093.

S U M M A R Y

The Fort Bend Flood Control Water Supply Corporation, established under article 1434a, V.T.C.S., and incorporated under the Nonprofit Corporation Act, is not a “political subdivision” of the state within section 191.092 of the Natural Resources Code. Land owned by the water supply corporation is not subject to the requirements of Natural Resources Code section 191.093.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

³Article III, section 52(b)(1) and (2) of the Texas Constitution removes certain legislatively authorized water projects from the prohibition against the lending of credit by political subdivisions. Article XVI, section 59 of the Texas Constitution authorizes the creation of conservation and reclamation districts.