



The State of Texas House of Representatives

EDMUND KUEMPEL DISTRICT 45 • COMAL & GUADALUPE COUNTIES

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Opinion Committee

RO-931

March 17, 1997

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, TX 78711

FILE # MC-39475-97
I.D. # 39475

Dear General Morales:

The City of New Braunfels owns and operates a utility system providing water, sewer and electric service through a board of trustees as authorized by Article 1115, Texas Revised Civil Statutes. Pursuant to that statute and the City Charter, the City transferred the management and control of the System to a five-member board of trustees consisting of four council-appointed members and the Mayor. Several recent controversies have arisen between the City and the Board. Since the disagreements can be resolved through a legal interpretation of a state statute that authorizes the creation of the Board and ordinances authorizing bonds approved by the Attorney General, both the City and the Board are requesting a legal opinion that will clarify the relationship between the two entities.

BACKGROUND

Section 11.09 of the New Braunfels City Charter, a copy of which is enclosed, authorizes the New Braunfels City Council to create by ordinance a public utilities board for the purpose of managing, controlling and operating the City's utility system(s). The Charter language tracks Article 1115, Texas Revised Civil Statutes, which allows a home-rule municipality to transfer the management and control of a utility system to a board of trustees while the utility system is encumbered. Pursuant to this statute, the City of New Braunfels established New Braunfels Utilities (NBU) in 1942 when it purchased the electric transmission and distribution systems from the Public Service Company of San Antonio, Texas through the sale of revenue bonds. The water and sewer systems were transferred to NBU from the City in 1959. Since its inception, NBU customers of the System are both in and outside the corporate limits of the City. Since its inception, NBU has been operating independently from the City, except with respect to establishment of rates and sale of bonds.

Chapter 130, Sections 130-26 through and including 130-35 of the New Braunfels Code of Ordinances establishes the organization and authority of the Board. Copies of these sections are enclosed. Section 130-26 provides that "...the complete management and control of the City's waterworks, sanitary sewer and electric light systems shall be through a board of trustees...". Section 130-26 further stipulates that the board of trustees "...shall act and transact business...." in that name. Section 130-27 directs the Board to operate the system "with the same freedom and in the same manner as is ordinarily enjoyed and followed by the board of directors of a private co-operation operating properties of a similar nature; provided, however, that nothing in this section shall be construed to take away from the City Council the exercise of all duties imposed upon such governing body under the provisions of the other sections of this Article and/or the Charter of the City." The City ordinances authorizing System revenue bonds issued by the City acknowledge that complete management and control of the System is vested in the Board and enumerate without limitation the powers that may be exercised by the Board. (See, for example, Section 23 of Ordinance 96-12 with respect to the issuance of the City of New Braunfels, Texas Utility System Revenue and Refunding Bonds Series 1996, a copy of which is enclosed). Differences in opinions about the meaning of the ordinances have caused several recent disagreements about the Board's authority. Although the City Council is empowered to amend the ordinances, the City and the Board want a clarification of the relationship between the entities and the relative authority of each with respect to the management and control of the System and the employees of NBU.

In an effort to describe more fully the level of recent debate, two of the outstanding issues are outlined below.

Comal Park

A recent debate between the City and NBU centered on the 1969 purchase of real property known as Comal Park. This property was purchased with utility system funds in the name of the City of New Braunfels "for municipal purposes" and specifically for "future expansion of the New Braunfels Utilities Disposal Plant facilities." After twenty-eight years, however, the property has still not been developed for expansion of the adjacent NBU sewage treatment plant. The City was interested in using the site for a new library or selling it to a developer.

Historically, utility system property has been acquired under various entity names until June 1975; all properties which were part of the City's utility systems were acquired in the name of the City of New Braunfels; from June 1975 until February 1988, such properties were acquired in the name of the City of New Braunfels (Utilities); after February 1988, such properties were acquired in the name of New Braunfels Utilities. Utility system property includes its central office facilities, warehouses, various casements, water and sewage treatment plants, electric distribution facilities and a number of parcels of unimproved property determined by the Board to be necessary for the operation, maintenance, improvement and expansion of the System.

Employment Policies

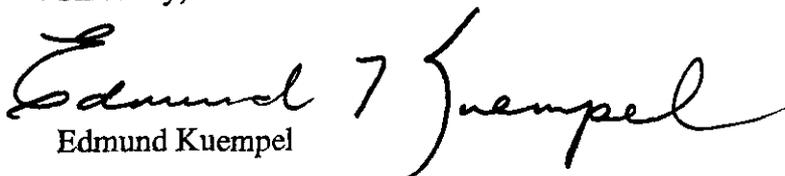
The ordinance that governs the Board does not specifically outline the duties of the Board relating to employment policies for employees of the utility system, although the ordinance does allow the Board to hire a general manager and provides that the general manager shall appoint all employees. Since NBU's inception its general manager has been charged with responsibility for employment and discharge of NBU personnel. All salaries and benefits are paid by NBU out of System revenues. NBU has its own personnel policies and benefit programs which are different from the City's. There have been recent disagreements regarding the inconsistencies of personnel policies between the City and NBU, differences in benefits offered to City and NBU employees, and the applicability of a City ethics ordinance to NBU employees.

LEGAL QUESTIONS

1. Is NBU an agent of the City or a separate legal entity; if NBU is an agent of the City, how much authority may be delegated to the Board pursuant to Article 1115, Texas Revised Civil Statutes?
2. Does the City have any authority to manage or control the employees of NBU, including its general manager; are NBU employees employees of the City?
3. Can NBU acquire property in its own name; does the City or Board have ultimate authority over uses of the property acquired for System purposes and disposal of such property?

Thank you for your consideration in addressing these legal issues.

Sincerely,


Edmund Kuempel

cc: Hon. Jan Kennady, Mayor, City of New Braunfels
Mr. Lupe Castillo, President, NBU Board of Trustees