



The Senate of
The State of Texas

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EXECUTIVE ADMINISTRATION
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Criminal Justice
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State Affairs

SENATOR RODNEY ELLIS
District 13

PRESIDENT PRO TEMPORE
1999 - 2000

March 9, 2004

General Greg Abbott
Office of Attorney General
P.O. Box 12548
Austin, TX 78711-2548

RQ-0193-GA

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OPINION COMMITTEE

FILE # ML-43565-04
I.D. # 43565

Dear General Abbott:

I am requesting an Attorney General opinion to clarify the extent of the power of eminent domain contained in the enabling legislation for the Upper Kirby Management District.

The Girl Scouts of San Jacinto Council (GSSJC) has recently attempted to acquire a building located at 3000 Southwest Freeway, Houston, Texas. The building is currently owned by AAA of Southern California (AAA). The Upper Kirby Management District (the District) also wishes to acquire the building. The District has threatened to condemn the building using the power of eminent domain if AAA does not sell the building to them. GSSJC questions if the power of eminent domain given to the District by the Texas state legislature was intended to be used in this manner. The District's actions seem inconsistent with its mission to promote economic development in the area.

Senate Bill 1750 from the 75th Legislative Session created the District with the intent to "promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, arts, entertainment, economic development, safety, and the public welfare in the area." The District was formed with certain powers, including those referenced in Chapter 375 of the Local Government Code, and in Chapter 49, Subchapters H and I of the Water Code.

Chapter 375, Subchapter E, Section 94 of the Local Government Code states that "a district may not exercise the power of eminent domain."

Chapter 49, Subchapter H, Section 222 of the Water Code states that "a district may acquire by condemnation any land, easements, or other property inside or outside the district boundaries for a water supply corporation, necessary for water, sanitary sewer, storm drainage, or flood drainage or other control purposes or for any other of its projects or purposes, and may elect to condemn either the fee simple title or a lesser property interest."

Lyric Centre
440 Louisiana, Suite 575
Houston, Texas 77002
(713) 236-0306
FAX: (713) 236-0604

P.O. Box 12068
Austin, Texas 78711
(512) 463-0113
FAX: (512) 463-0006
Dial 711 For Relay Calls

2440 Texas Parkway, Suite 110
Missouri City, Texas 77489
(281) 261-2360
FAX: (281) 261-4726

E-Mail: rodney.ellis@senate.state.tx.us

References to the Local Government Code and the Water Code are in conflict, with one specifically denying the power of eminent domain and the other granting eminent domain.

In particular, I am looking for an Attorney General opinion on the following questions:

1. Did the Texas legislature intend to grant the District broad powers of eminent domain?
2. What is the extent of the eminent domain power contained in the District's enabling legislation?
2. Can the power of eminent domain be used to interfere with a transaction between two interested parties solely because the District desires to acquire property for its own use?

Please consider this as a formal request for an Attorney General opinion clarifying the scope of eminent domain power in the Upper Kirby Management District.

Sincerely,

A handwritten signature in black ink that reads "Rodney Ellis". The signature is written in a cursive, flowing style.

Rodney Ellis
RE:kb
enclosures