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OPINION COMMITTEE

RQ-0049-GA

25 April 2003

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Lorenzo de Zavala
State Archives and
Library Building

P.O. Box 12927
Austin, Texas
78711-2927

1201 Brazos St.
Austin, Texas
78701

www.tsl.state.tx.us

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The Honorable Greg Abbott
Attorney General of the State of Texas
300 W. 15th Street
Austin, TX 78701

Dear General Abbott:

I am writing to request your official opinion on the following questions:

1. Is the Kempner Water Supply Corporation subject to the Local Government Records Act?
2. If the Kempner Water Supply Corporation is not subject to the Local Government Records Act, what other statutes concerning records do apply and what records is a non-profit water supply corporation required to keep?

These questions arose because of an inquiry received by this office, and I will provide you with the background on this issue as well as our analysis of the relevant laws. In a letter dated November 6, 2002, Mr. Frank Di Muccio, Jr. wrote to the Texas State Library and Archives Commission (TSLAC) regarding the status of the Kempner Water Supply Corporation (KWSC) of Kempner, Texas, and KWSC's standing with respect to the Local Government Records Act. The agency's reply was contained in a letter dated November 20, 2002, from the State and Local Records Management (SLRM) Division. In this letter, Mr. Tim Nolan, Program Planning and Research Specialist, informed Mr. Di Muccio that water supply corporations are not subject to the provisions of the Local Government Records Act because they are not specifically mentioned in the act.

In a letter dated November 12, 2002, Mr. Robert H. Lloyd, General Counsel for Kempner Water Supply Corporation, wrote to the director of the State and Local Records Management Division seeking a determination of whether or not the non-profit water supply corporation was subject to the Local Government Records Act. Mr. Lloyd's contention was that Kempner was exempt. In his November 13, 2002, response, SLRM director Dr. Michael Heskett informed Mr. Lloyd of the determination that water supply corporations are exempt from the Local Government Records Act.

Mr. Di Muccio wrote to Governor Rick Perry on December 5, 2002, outlining his concerns with TSLAC's determination and raising issues related to the status of water supply corporations as local governments in order to retain their tax exempt status. Subsequently, Mr. Di Muccio contacted me directly and requested a review of the situation and the pertinent facts.

There are a number of factors that must be considered. Water supply corporations are subject to the Public Information Act (see Section 552.003(1)(A)(x), Government Code), the Open Meetings Act (see Section 551.001(3)(J), Government Code), and are clearly defined as political subdivisions in the act governing the Texas Water Assistance Program (see Section 15.001(5), Water Code). For those reasons, it seems reasonable that a "special-purpose district or authority" in the Local Government Records Act (see Section 201.003(7), Local Government Code) includes a water supply corporation.

However, there are mitigating factors on the opposite side of the issue. In those instances in which non-profit water supply corporations are made subject to laws generally applicable to local governments (or political subdivisions), the Legislature has given effect to its intention by the use of language that draws specific attention to water supply corporations (e.g.; see Sections 552.003(1)(A)(x) and Section 551.001(3)(J), Government Code, for the inclusion of water supply corporations in the Public Information Act and the Open Meetings Act, respectively). The absence of such language in the definition of a local government in Section 201.003(7), Local Government Code, seems to be an indication that it was not the intent of the Legislature that water supply corporations are subject to the Local Government Records Act.

In addition, water supply corporations are defined as political subdivisions in Section 15.001(5), Water Code, but definitions are generally confined to the section or sections of a statute to which they apply and cannot be simply transferred with full force and effect to other sections of state law. In addition, while defined as political subdivisions, the peculiar language of Section 15.001(5), Water Code, seems to indicate that the definition of water supply corporations as political subdivisions is applicable to Chapter 15, Water Code, only.

The use of the phrase "special-purpose district or authority" in Section 201.003(7), Local Government Code, parallels the definition of governing bodies in Sections 552.003(1)(A)(viii) and 551.001(3)(H), Government Code (the Public Information Act and the Open Meetings Act, respectively). Since non-profit water supply corporations are only considered subject to both acts by the addition of special language to that effect, it may not be reasonable to regard them, by extension, as special districts or authorities under the Local Government Records Act.

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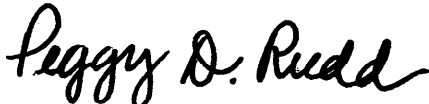
I believe there is sufficient confusion to warrant seeking an opinion from the Office of the Attorney General. Before submitting this request, however, I discussed the matter and all particulars with Assistant Attorney General Joe Thrash who concurred that a request for an official opinion was warranted.

Relevant materials included with this request are:

Copy of November 6, 2002, letter from Frank A. Di Muccio, Jr. to TSLAC
Copy of November 20, 2002 letter from Tim Nolan to Frank A. Di Muccio, Jr.
Copy of November 12, 2002, letter from Robert H. Lloyd to Michael Heskett
Copy of November 13, 2002, letter from Michael Heskett to Robert H. Lloyd
Copy of December 5, 2002, letter from Frank A. Di Muccio, Jr. to Governor Rick Perry

Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in black ink that reads "Peggy D. Rudd". The signature is written in a cursive, flowing style.

Peggy D. Rudd
Director and Librarian

Enclosures (5)