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SENATOR GLENN HEGAR
DISTRICT 18

JUL 26 2011

OPINION COMMITTEE

FILE # ML-46791-11
I.D. # 46791

RQ-0986-GA

July 21, 2011

The Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

RE: Request for Attorney General's Opinion

Dear General Abbott:

I am writing today to request clarification on Aransas County Navigation District's authority to develop and finance parks and recreation facilities.

Senate District 18, which I am fortunate to represent in the Texas Legislature, contains almost one-third of the Texas coast. With approximately 1,325 miles of County Bay shoreline (based on Coastal Resources Program, GIS Lab, calculations) this area contains many important bays and inland and coastal waterways. As part of this geography, Senate District 18 also contains many Navigation Districts created under Section 59, Article XVI, Texas Constitution to ensure the navigation of these inland and coastal waters of Texas.

The park in question, Rockport Beach Park, is currently on land owned by the district that is actually a spoil area that was created from dredged material by the navigation district. The district has leased the land to the City of Rockport who has maintained the park for nearly 25 years. The question relates to the ability of the Aransas County Navigation District to have and maintain the park, and to their ability to finance with taxes parks and recreational facilities. The district claims that the park would be an incidental use of the substructure they created for the improvement, preservation, and conservation of inland and coastal water for navigation. The County wants to ensure that, in authorizing an M&O tax rate that might include operations of the park by the district, the district is indeed authorized to have and maintain parks and recreation facilities.

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Section 5001.004 of the Special District Local Laws Code provides:

GOVERNANCE OF DISTRICT The district is governed by Chapter 62, Water Code, and all statutes relating to a navigation district created under that chapter.

Section 62.101 of the Water Code provides:

PURPOSES OF DISTRICT. A district may be created under this chapter to provide, in or adjacent to its boundaries, for: (1) the improvement, preservation, and conservation of inland and coastal water for navigation; (2) the control and distribution of storm water and floodwater of rivers and streams in aid of navigation; and (3) any other purposes necessary or incidental to the navigation of inland and coastal water or in aid of these purposes, as stated in Article XVI, Section 59, of the Texas Constitution.

Subsection (c-1) of Section 59, Article XVI, Texas Constitution, added in 2003, provides: In addition and only as provided by this subsection, the Legislature may authorize conservation and reclamation districts to develop and finance with taxes those types and categories of parks and recreational facilities that were not authorized by this section to be developed and financed with taxes before September 13, 2003. For development of such parks and recreational facilities, the Legislature may authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County, or Montgomery County, or for the Tarrant Regional Water District, a water control and improvement district located in whole or in part in Tarrant County. All the indebtedness may be evidenced by bonds of the conservation and reclamation district, to be issued under regulations as may be prescribed by law. The Legislature may also authorize the levy and collection within such district of all taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of the bonds and for maintenance of and improvements to such parks and recreational facilities. The indebtedness shall be a lien on the property assessed for the payment of the bonds. The Legislature may not authorize the issuance of bonds or provide for indebtedness under this subsection against a conservation and reclamation district unless a proposition is first submitted to the qualified voters of the district and the proposition is adopted. This subsection expands the authority of the Legislature with respect to certain conservation and reclamation districts and is not a limitation on the authority of the Legislature with respect to conservation and reclamation districts and parks and recreational facilities pursuant to this section as that authority existed before September 13, 2003.

A superficial check of the codes and laws does not indicate that the Aransas County Navigation District has the explicit powers to have or maintain parks or recreational facilities and so we are at an impasse with the Navigation District claiming the authority as an incidental use of the substructure and the County uncertain that the authority exists or that the operation of a park facility is incidental to maintenance of the inland and coastal water for navigation.

Additionally, the City of Rockport recently made improvements at Rockport City Park through the issuance of bond indebtedness. Subsection (c-1) of Section 59, Article XVI, Texas Constitution allows for indebtedness payable from taxes for the development of such parks and recreational facilities in only certain listed counties. If the Attorney General finds that Aransas County Navigation District has the authority to have and maintain the park, would they be able to either assume the bond debt incurred by the City of Rockport for the park improvements or be authorized to pay the indebtedness incurred by the City for the improvements?

Thank you for your attention to this matter. Please let me know if I can be of further assistance.

Sincerely,



Glenn Hegar

cc: Judge Burt Mills, Aransas County
Commissioner Jack Chaney, Aransas County
Commissioner Leslie "Bubba" Casterline, Aransas County
Commissioner Charles Smith, Aransas County
Commissioner Howard Murph, Aransas County
Richard Bianchi, Aransas County Attorney
Mayor Charles J. "C.J." Wax, City of Rockport
Mayor Pro-Temp Bill Fisher, City of Rockport
Councilman Paul Lippke, City of Rockport
Councilwoman Adelaide Marlatt, City of Rockport
Councilman Leo Villa, City of Rockport
William G. "Bill" Walston, City Attorney, City of Rockport
Commissioner Merlin Hartdegen, Aransas County Navigation District
Commissioner John Joslin, Aransas County Navigation District
Commissioner Tony Dominguez, Aransas County Navigation District
Commissioner Tommy Moore, Aransas County Navigation District
Commissioner Ronald B. Outen, Aransas County Navigation District
Jerry Benadum, General Counsel, Aransas County Navigation District
Keith Barrett, Harbor Master, Aransas County Navigation District
Sam Ramos, Superintendent, Aransas County Navigation District
State Representative Todd Hunter
State Representative Geanie Morrison