LP 12

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Collin County Commissioners Court
ATTN: Bill Bilyeu
Jack Hatchell Administration Building
2300 Bloomdale Road, Suite 4192
McKinney, TX 75071

Re: Police Protection in Special Utility Districts or MUDS

Dear Bill:

You have requested an update on my opinion regarding the provision of police services and protection within the boundaries of one or more of the many different kinds of special districts. As you know, many pages of the state's statutes are dedicated to the traditional forms of special districts, primarily contained in the water code. These districts, such as drainage districts, irrigation districts, road districts, and others, were created by the legislature for very specific purposes, and limited to the provision of those purposes by the statutes creating them. The state law also contains a special districts code which lists dozens of special districts, many of which are special legislation for very specific projects or developments. These often have a combination of the different powers and duties of the traditional forms of districts within the Texas water code. The special districts, also known as "designer" districts, can have both combinations of the traditional district's powers, duties, and sources and uses of income, but may also, during the legislative process, acquire powers specific only to that particular district.

Traditional specific districts were intended to fund only their specific purpose, such as drainage, or roads for landowners or towns seeking to solve local issues. As time has progressed, developers have discovered special districts extraordinarily useful to finance development, often outside city limits or municipal ETJ's, thereby avoiding traditional city notions of planning, zoning, balanced growth, coordination of streets, highways, water and sewer systems, school facilities, and public safety.

Naturally not all special districts are a problem. Seis Lagos is a good example of a successful special district, developed in keeping with the surrounding municipalities. As a district, rather than a town, it lacks any legal authority to provide all levels of municipal services. The recent debate on fire protection services is an example of this limitation.

Special districts, like general law cities, have no power which is not granted by the Texas constitution, or statutory authority from the legislature. I have attached to this letter examples of the powers given to special districts by the legislature. Examples of special districts legislatively authorized to function in a municipal manner, such as providing police protection, are rare. One example in the Water Code, pertaining only to Water Improvement Districts, is Section 55.251, Peace Officers. This allows a water improvement district to employ peace officers for "regulations" of the district, or state law, if the offense occurs or is "about to occur", on land or water owned or controlled by the district. This provision also allows the Water Improvement District peace officer to make an arrest "where an offense is being committed which involves injury or detriment to any property owned or controlled by the district". Chapter 55 is silent as to the specific form of funding to pay its peace officers, though it would be logical to assume that it is to be treated as an operating expense of the district.

Section 65.201 of the Water Code, regarding Special Utility Districts (such as Seis Lagos), allows a special utility district to provide fire fighting services for the inhabitants of the district. One can only assume that if the legislature had intended a Special Utility District to have the power to provide police services for the inhabitants of the district, they would have said so. Absent that, no such presumption should be made.

The result of this analysis is as follows:

A. A majority of special districts have no authority to provide police services, in addition to the specific services authorized for the district. Examples of those without specific authority for police services include Section 53, Fresh Water Supply Districts; Section 54, Municipal Utility Districts; Section 56, Drainage Districts; Section 58, Irrigation Districts; and Section 65, Special Utility Districts. Over the last 20 years, some traditional districts, such as Municipal Utility Districts, have legislatively acquired additional municipal powers. For example, a MUD now has the ability to provide street or security lighting in public right-of-ways within the boundaries of the district, as well as to provide street repair or maintenance, if the district has been in existence for at least ten years. MUDs were authorized to sell bonds for street repairs or maintenance by the legislature in 1997.

B. Some districts which do not have specific statutory authority to provide peace officers, are doing it anyway. Such practice could easily be found unlawful by the courts if the district were to tax the property within the district, and expend it on an unauthorized expenditure, even police protection. Some districts may be imposing "special fees" rather than taxes, or requiring mandatory home owners associations, through which they derive funds for public safety. A mandatory home owners association created by the developer, rather than the district, is probably an acceptable way to fund public safety, though the ability to enforce payment of home owner association dues can be more difficult than forcing payment of special district ad valorem taxes, and/or the water or sewer bill.

C. Whether a true designer district has police powers is dependent on the legislative bill creating it. The special districts proposed in the Van Alstyne area attempted to get police services included in their powers, and were not successful.

D. In order for districts to finance police protection, legislation is needed to clearly

establish that a special district may expend a portion of its operating revenues for the provision of police protection for all persons and property within the district.

Please feel to contact me for additional information.

Best regards,

James E. Shepherd

Enclosure

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Water Code Provisions Regarding Emergency Services and Other "Municipal" Authority

A. Section 53 — Fresh Water Supply Districts

Sec. 53.126. EFFECT OF ENUMERATION OF POWERS. No statement of specific powers in this chapter is a limitation on the general powers given by this chapter, unless it is specifically so stated.

B. Section 54 — Municipal Utility Districts

Sec. 54.201. POWERS.

(a) A district shall have the functions, powers, authority, rights, and duties which will permit accomplishment of the purposes for which it was created.

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of the district authorized by the constitution, this code, or other law, including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to:

(1) supply water for municipal uses, domestic uses, power, and commercial purposes and all other beneficial uses or controls;

(2) collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;

(3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in a district;

(4) irrigate the land in a district;

(5) alter land elevation in a district where it is needed;

(6) navigate coastal and inland waters of the district; and

(7) provide parks and recreational facilities for the inhabitants in the district, subject to the provisions of Chapter 49.

Added by Acts 1971, 62nd Leg., p. 786, ch. 84, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 100, Sec. 2, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 248, Sec. 27, eff. June 18, 2003.

Sec. 54.236. STREET OR SECURITY LIGHTING. Subject to the provisions of this section, a district may purchase, install, operate, and maintain street lighting or security lighting within public utility easements or public rights-of-way within the boundaries of the district. A district may not issue bonds supported by ad valorem taxes to pay for the purchase, installation, and maintenance of street or security lighting.

Added by Acts 1991, 72nd Leg., ch. 820, Sec. 2, eff. Aug. 26, 1991. Amended by Acts 2001, 77th Leg., ch. 1423, Sec. 30, eff. June 17, 2001.

Sec. 54.242. STREET REPAIR OR MAINTENANCE. A district created by general law or special act of the legislature in existence for at least 10 years may repair or maintain a street within the district as provided by Section 54.522.

Added by Acts 1997, 75th Leg., ch. 520, Sec. 1, eff. Sept. 1, 1997

Sec. 54.522. BONDS FOR STREET REPAIR OR MAINTENANCE.

(a) The legislature finds that the condition of streets affects:

(1) the control, storage, preservation, and distribution of the state's storm and flood waters;

(2) the control, abatement, or change of any shortage or harmful excess of water; and

(3) a municipal utility district's ability to accomplish its purposes.

(b) It is the policy of the state to authorize a municipal utility district in certain circumstances to take action that is necessary to prevent the condition of a street within the district from adversely affecting the control, storage, preservation, and distribution of the state's storm and flood waters, adversely affecting the control, abatement, or change of any shortage or harmful excess of water, or otherwise impeding a district's ability to accomplish its purposes.

(c) A district created by general law or special act of the legislature in existence for at least 10 years may issue bonds for the purpose of repairing or maintaining streets within the district if the bonds are authorized by a majority vote of the resident electors of the district voting in an election called and held for that purpose.

(d) An election required by this section must be held on the uniform election date in November authorized by Section 41.001, Election Code. Notwithstanding Section 41.003, Election Code, an election under this section may be held on the date of the general election for state and county officers.

Added by Acts 1997, 75th Leg., ch. 520, Sec. 2, eff. Sept. 1, 1997.

C. Section 55. — WATER IMPROVEMENT DISTRICTS

Sec. 55.251. PEACE OFFICERS. The district may employ and constitute its own peace officers. The peace officers may make arrests when necessary to prevent or abate the commission of an offense against the regulations of the district or state laws if the offense occurs or is about to occur on *land or water owned or controlled by the district.* Arrests also may be made any place where an offense is being committed which involves injury or detriment to *any property owned or controlled by the district.*

Acts 1971, 62nd Leg., p. 450, ch. 58, Sec. 1, eff. Aug. 30, 1971.

D. Section 56 — Drainage Districts

Sec. 56.242. MAINTENANCE TAX.

(a) The board shall have a tax assessed and collected on district property sufficient to maintain, repair, and preserve district improvements and to pay legal debts, demands, and obligations of the district, but in districts operating under Article III, Section 52, of the Texas Constitution, the tax may not be in an amount greater than one-half of one percent of the total assessed valuation of the district for that year.

(b) Taxes collected under this section shall be placed in the construction and maintenance fund.

(c) The board may issue negotiable notes payable from the maintenance tax authorized by Subsection (a) to meet the financial obligations of the district, as described by Subsection (a). The notes shall be payable over a period not to exceed five years from the date of issuance. Notes issued under this subsection are not required to be approved by the Texas Natural Resource Conservation Commission. A district may not have outstanding, at any one time, notes in excess of $3 million under this subsection.

(d) The board may issue negotiable notes to pay any lawful expenditure of the district, other than principal and interest on debt, including all costs to improve or repair any existing drainage canal, ditch, watercourse, or other work constructed, repaired, or improved by the district. The notes may be payable from and secured by a lien on and pledge of any available funds of the district, including the proceeds of a maintenance tax. Notes issued under this subsection shall be payable over a period not to exceed 20 years from the date of issuance and if issued for a term

longer than one year must be treated as "debt" as defined by Section 26.012, Tax Code. The maximum debt service on all notes issued under this subsection may not exceed in any fiscal year of a district an amount that could be paid from the proceeds of one-fourth of the maximum tax the district is authorized by law to levy on the date any notes are issued.

Acts 1971, 62nd Leg., p. 519, ch. 58, Sec. 1, eff. Aug. 30, 1971. Amended by Acts 2001, 77th Leg., ch. 298, Sec. 14, eff. Sept. 1, 2001.

E. Section 58 — Irrigation districts.

Sec. 58.121. PURPOSES OF DISTRICT.

(a) Irrigation districts operating under this chapter are limited purpose districts established primarily to deliver untreated water for irrigation and to provide for the drainage of lands and such other functions as are incidental to the accomplishment of such limited purposes. An irrigation district shall not engage in the treatment or delivery of treated water for domestic consumption or the construction, maintenance, or operation of sewage facilities or provide any other similar municipal services. An irrigation district may cooperate with the United States under the federal reclamation laws for the purpose of:

(1) construction of irrigation and drainage facilities necessary to maintain the irrigability of the land;

(2) purchase, extension, operation, or maintenance of constructed facilities; or

(3) assumption, as principal or guarantor of indebtedness to the United States on account of district lands.

(b) An irrigation district operating under this chapter may contract with municipalities, political subdivisions, water supply corporations, or water users for the delivery of untreated water.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977.

Sec. 58.122. POWERS OF DISTRICT. The district has the functions, powers, authority, rights, and duties which will permit the accomplishment of the purposes for which it was created, including the investigation and, in case a plan for improvements is adopted, the construction, maintenance, and operation of necessary improvements, plants, works, and facilities, and the

acquisition of water rights and all other properties, land, tenements, materials, borrow and waste ground, easements, rights-of-way, and everything considered necessary, incident, or helpful to accomplish by any practicable mechanical means any one or more of the objects authorized for the district, subject only to the restrictions imposed by the Constitutions of Texas or the United States. A district also may acquire property deemed necessary for the extension or enlargement of the plant, works, improvements, or service of the district.

Added by Acts 1977, 65th Leg., p. 1537, ch. 627, Sec. 1, eff. Aug. 29, 1977

F. Section 65—Special Utility Districts (such as SLUD)

Provision for fire, not police.

"Sec. 65.201. POWERS.

(a) A district has the functions, powers, authority, and rights that will permit accomplishment of the purposes for which it is created.

(b) A district may purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes for which it was created, including works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to:

(1) supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls;

(2) collect, transport, process, dispose of, store, and control domestic, industrial, or communal wastes whether in fluid, solid, or composite state;

(3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in the district;

(4) irrigate the land in a district;

(5) alter land elevation in a district where it is needed; and

(6) provide fire-fighting services for the inhabitants of the district."