



**Office of the Attorney General  
State of Texas**

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ATTORNEY GENERAL

May 20, 1994

Honorable Ben Campbell  
Chairman of Committee on County Affairs  
House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 94-049

Re: Whether a municipality lying within the territory of a municipal utility district is authorized to require the district to obtain its permission before commencing construction or maintenance work within the area of both entities (ID# 23394)

Dear Representative Campbell:

You ask us whether a municipality lying within the territory of a municipal utility district is authorized to require the district to obtain its permission before the district commences construction or maintenance work within the area of both entities. We believe the answer to this question depends on the nature of the construction and maintenance work and may also depend on the reasonableness of any interference with the district's activities. We therefore are unable to give you a simple answer of yes or no.

A municipal utility district ("MUD") stands, within its sphere of authority, on the same footing as a county, precinct, or other state political subdivision. *Cf. Harris County Drainage Dist. No. 12 v. City of Houston*, 35 S.W.2d 118, 120 (Tex. Comm'n App. 1931, holding approved) (so said of drainage district); *Jones v. Jefferson County Drainage Dist. No. 6*, 139 S.W.2d 861, 862 (Tex. Civ. App.—Beaumont 1940, writ ref'd) (same). Therefore, we believe that the legal principles applicable to a county in its relations with a municipality located in its jurisdiction would apply equally to a MUD. Unfortunately, the analogy of a MUD to a county does not mean that dimensions of the MUD's obligation to comply with municipal law are easy to formulate.

The extent to which a county in Texas is required to comply with municipal codes and ordinances, such as zoning codes and building ordinances, is not well established. Perhaps the best that can be said is that any unreasonable interference with a county's activities otherwise authorized by law is not permitted if such a result would occur by enforcing any local law.

35 D. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 9.7 (Texas Practice 1989).

Generally, a county must comply with municipal police regulations that do not unreasonably impede the county's activities within its sphere of authority. *E.g.*, Attorney General Opinion JM-180 (1984) (county's use of land for auxiliary courthouse is subject to municipality's zoning ordinances only to extent that ordinances do not prevent county from reasonably locating its auxiliary courthouse within municipal limits). We will briefly mention two exceptions to this rule below, although there may be others.<sup>1</sup>

One exception to the general rule applies to a county's exercise of police power that state law vests solely in the county. In such a case the reasonableness of the municipality's ordinance is irrelevant. A municipal ordinance that is inconsistent with state law is impermissible. *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982), *cert. denied*, 459 U.S. 1087 (1982). The court in *City of Gallatin v. Cherokee County*, 615 S.W.2d 321 (Tex. Civ. App.—Tyler 1981, writ ref'd n.r.e.), accordingly held that a city's ordinances that would limit areas where dumping would be permitted were unlawful and unenforceable attempts to restrict a county's authority under statute to locate a garbage disposal facility at the place of its choosing. *Id.* at 322. Compare the holding in *Gallatin* with this office's conclusion in Attorney General Opinion WW-218 that a county preparing to construct a new courthouse was subject to a city ordinance requiring the payment of fees for demolition permits and construction permits relating to the proposed building, in spite of the fact that state law expressly authorized commissioners courts to "[p]rovide and keep in repair courthouses, jails and all necessary public buildings." Attorney General Opinion WW-218 (1957) at 4 (quoting former V.T.C.S. article 2351). The statute in question in that opinion differed from the statute in *Gallatin* in that it "[wa]s so general as not to vest sole police jurisdiction with regard to regulation of county buildings with the county commissioners' court." *Id.*

Another exception to the general rule appears to be that a municipality's exercise of police power by ordinance must yield to a county's conflicting reasonable exercise of police power if the latter relates to a paramount public concern and if the county's determination that the municipal regulation would threaten public health, safety, and welfare is supported by substantial evidence. The court in *City of Galveston v. Galveston County*, 159 S.W.2d 976, 980 (Tex. Civ. App.—Galveston 1942, writ ref'd), held that Galveston County's determination that the City of Galveston's proposed installation of parking meters on Seawall Boulevard would endanger the efficiency of the seawall and the safety of the boulevard in case of a major storm would not be set aside because it was supported by substantial evidence, and therefore the court affirmed the granting of a temporary injunction against the installation of the meters. The court found that the seawall was primarily dedicated to the purpose of serving as a barrier to storm waters from the Gulf of Mexico and that the dedication of the Seawall Boulevard roadway along the seawall served a subordinate and inferior purpose. *Id.* Therefore, the court

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<sup>1</sup>You do not ask and we do not consider the possible implications of a consent agreement under section 42.042 of the Local Government Code and section 54.016 of the Water Code.

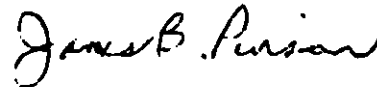
concluded, the city's police jurisdiction to regulate traffic on the seawall yielded to the county's superior police jurisdiction to regulate the seawall's stormworthiness. *Id.* The significance of *City of Galveston* is that in some conflicts of police power between a municipality and a county, if the county's police power relates to a paramount public welfare concern, the burden of proof may shift to the municipality to prove that there is no substantial evidence to support the county's determination that the municipality's regulation would threaten public health, safety, and welfare. *See id.*

Your request letter describes various recent incidents of a certain municipality's attempts to enforce its ordinances against a MUD. You do not ask us to comment on those situations, and we would not be able in any event to determine how the foregoing rules would apply to them, for each situation as described still does not present all the facts necessary for us to conclude whether the municipality's regulation would be enforceable. Of course, fact-finding is beyond the scope of an attorney general advisory opinion. We hope, however, that our advice gives sufficient guidance so that a municipality and a MUD involved in a conflict over the applicability *vel non* of a municipal regulation may assess all the facts and reach a proper resolution.

### S U M M A R Y

Generally, a municipal utility district ("MUD") must comply with municipal police regulations that do not unreasonably impede the MUD's activities within its sphere of authority. However, a MUD's exercise of police power that state law vests solely in it is not subject even to reasonable municipal regulation. Furthermore, a municipality's exercise of police power by ordinance must yield to a MUD's conflicting reasonable exercise of police power if the latter relates to a paramount public concern and if the MUD's determination that the municipal regulation would threaten public health, safety, and welfare is supported by substantial evidence.

Yours very truly,



James B. Pinson  
Assistant Attorney General  
Opinion Committee