



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1998

The Honorable Robert E. "Bobby" Bell
Jackson County District Attorney
115 West Main, Room 205
Edna, Texas 77957

Letter Opinion No. 98-096

Re: Whether the Jackson County County-Wide
Drainage District has sole authority to provide for
the control, storage, preservation, and distribution
of storm and flood waters and to reclaim and drain
district lands within the City of Edna's corporate
limits (RQ-1116)

Dear Mr. Bell:

You ask whether only the Jackson County County-Wide Drainage District ("district") is responsible for controlling, storing, preserving, and distributing storm and flood waters and for reclaiming and draining lands within the City of Edna's ("city") corporate limits. The implied, flip-side of your question is whether the city is devoid of authority in these areas. We conclude that the district and the city share authority to a certain extent. We begin by setting out relevant facts about each entity.

The district is a conservation and reclamation district created under Texas Constitution article XVI, section 59.¹ The district is "to provide for the control, storing, preservation and distribution of storm and flood waters and for the reclamation and drainage of its overflowed lands and other lands needing drainage."² The district also may exercise any powers, rights, privileges, and functions that general law has conferred upon drainage districts or water control districts generally.³ The district's territory includes Jackson County in its entirety:

The District contains all of the territory within the boundaries of Jackson County, Texas, whether presently in a drainage, conservation and

¹See Act of May 1, 1969, 61st Leg., R.S., ch. 200, § 1, 1969 Tex. Gen. Laws 587, 587.

²*Id.*

³See *id.*

reclamation, water control and improvement, or other type of district or political subdivision.⁴

The city is a home-rule city⁵ located within Jackson County and, hence, within the district.⁶ You suggest that because the city is located within the district it has no authority to act on matters affecting the control, storage, preservation, and distribution of flood waters within the city limits and reclaiming and draining of lands within the city limits. We believe your suggestion is incorrect.

Without question, the district is responsible for controlling, storing, preserving, and distributing storm and flood waters and, as necessary, for reclaiming and draining county land, without and within the city. The district's enabling act clearly authorizes the district to undertake projects county-wide to accomplish these purposes.

Nevertheless, the district lacks sole authority over water- and drainage-related matters within the city. A city is specifically authorized to establish a drainage utility system to protect the city's interests.⁷ In addition, the city's police powers enable it to act to reasonably protect the public health, safety, and welfare of Edna citizens.⁸ Conceivably, some water- and drainage-related problems may affect the public health and safety, and the city is authorized to take steps to alleviate the problems (unless the actions are inconsistent with the city's charter).⁹ Moreover, as a home-rule city, the city may exercise any power that is consistent with the constitution, general laws, and the city's charter.¹⁰ We are unaware of any law that precludes a municipality from operating a drainage system, or from performing any of the other functions the district performs, either generally or in a situation, such as this, where the municipality shares territory with a conservation and reclamation district.

⁴*Id.* § 2, 1969 Tex. Gen. Laws 587, 588.

⁵*Accord* THE DALLAS MORNING NEWS, 1998-1999 TEXAS ALMANAC AND STATE INDUSTRIAL GUIDE 438 (1997).

⁶*See id.* at 216.

⁷*See* Local Gov't Code §§ 402.041 - .054.

⁸*See* 6A GAIL O'GRADNEY, J.D., & JULIE A. ROZWADOWSKI, J.D., MCQUILLIN THE LAW OF MUNICIPAL CORPORATIONS § 24.33, 96-97 (3d ed. 1991-1997).

⁹For example, the city may provide drainage for its inhabitants. *See* 11 THOMAS CURRY ET AL., MCQUILLIN THE LAW OF MUNICIPAL CORPORATIONS § 31.17, 229 (3d ed. 1991); 18A JAMES PERKOWITZ-SOLHEIM, J.D., ET AL., MCQUILLIN THE LAW OF MUNICIPAL CORPORATIONS § 53.119, 217-18 (3d ed. 1991-1993).

¹⁰*See* Tex. Const. art. XI, § 5; *see also Amstater v. Andreas*, 273 S.W.2d 95, 97 (Tex. Civ. App.--El Paso 1954, writ ref'd n.r.e.); *City of Lubbock v. South Plains Hardware Co.*, 111 S.W.2d 343, 345 (Tex. Civ. App.--Amarillo 1937, no writ).

Thus, the district's powers and the city's powers overlap with respect to land within the city limits.¹¹ The courts and this office previously have concluded that a municipality may overlap in territory and in functions with a special-purpose entity invested with limited powers.¹²

With respect to how the district and the city should share authority over the shared territory, we note that the district is specifically authorized to cooperate with and to contract with municipalities and other political subdivisions.¹³ We further note that neither the district nor the city may interfere with the legal exercise of the other's powers:

While it is true that the city may not interfere with the legal exercise of the district's powers . . . , the district likewise has no right to interfere with the city in the making of improvements necessary for the protection of property, health, and general welfare of its citizens as allowed by its charter, so far as they do not conflict with the district--each being supreme within its own sphere.¹⁴

¹¹In fact, the legislature contemplated that a drainage district's territory may overlap the territory of other political subdivisions, as a municipality. Water Code section 56.013, applicable to drainage districts generally, indicates that a drainage district may encompass "all or part of any" municipality.

¹²See *City of Pelly v. Harris County Water Control & Imp. Dist. No. 7*, 198 S.W.2d 450, 452-53 (Tex. 1946); *State ex rel. Grimes County Taxpayers Ass'n v. Texas Mun. Power Agency*, 565 S.W.2d 258, 268-69 (Tex. Civ. App.--Houston [1st Dist.] 1978, writ diss'd) (finding no constitutional restriction upon overlapping of special-purpose municipal entity and municipal entity with general governmental authority, even though some of their purposes are same); Attorney General Opinion JM-565 (1986) at 3.

¹³See Act of May 1, 1969, 61st Leg., R.S., ch. 200, § 11(d)(3)(4), (e), 1969 Tex. Gen. Laws 587, 590.

¹⁴*Harris County Drainage Dist. No. 12 v. City of Houston*, 35 S.W.2d 118, 122 (Tex. Comm'n App. 1931, holding approved).

S U M M A R Y

With respect to land within the city limits of the City of Edna, the Jackson County County-Wide Drainage District and the city both are authorized to act to "provide for the control, storing, preservation and distribution of storm and flood waters and for the reclamation and drainage of its overflowed lands and other lands needing drainage."¹⁵ The city's authority is limited by the scope of its police powers and its city charter.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Opinion Committee

¹⁵Act of May 1, 1968, 61st Leg., R.S., ch. 200, § 1, 1969 Tex. Gen. Laws 587, 587.