NO. _____

IN THE SUPREME COURT OF TEXAS

KAUFMAN COUNTY DEVELOPMENT DISTRICT NO. 1,
Petitioner,

vs.

GARY HENRY, ET AL.,
Respondent.

On Petition for Review from the
Third Court of Appeals at Austin, Texas

PETITION FOR REVIEW

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PETITION FOR REVIEW

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioner, Kaufman County Development District No. 1 ("the District"), respectfully submits its Petition for Review and would show the Court as follows:

STATEMENT OF THE CASE

This case involves the validity of an assessment by the District and asks whether the Legislature's long standing practice of incorporating taxing and assessing powers[1] from one statute into another without using the words "including taxing and assessing powers" is legal and effective.

[1] As the court of appeals correctly notes, assessments are not taxes, and taxes are not assessments. However, Petitioner's arguments depend in no way on that recognized distinction. The general statutory and case law principles concerning adoption of either power by reference are the same, and cases and statutes cited herein deal with both.

A group of homeowners filed suit in Kaufman County, seeking injunctive and monetary relief against an assessment by the District. The District brought suit in Travis County, under chapter 1205 of the Texas Government Code. Pursuant to chapter 1205, the District Court of Travis County consolidated the Kaufman County proceeding into the Travis County case and abated it, and then proceeded to the accelerated consideration of the validity of the securities involved, as required by chapter 1205. The 53rd Judicial District Court of Travis County, Texas, Judge Margaret Cooper presiding, granted the District's motion for summary judgment, and denied the cross motion for summary judgment of Gary Henry, et al. ("the Homeowners"). *See* Appendix 1.

The Court of Appeals for the Third Judicial District reversed the summary judgment for the District and remanded the case to the trial court, holding that summary judgment should have been granted for the Homeowners. Justice Bea Ann Smith authored the opinion, which was joined by Chief Justice W. Kenneth Law and Justice Jan P. Patterson. The opinion has not yet been published in the permanent law reports, but may be found at 2004 WL 524483. The slip opinion is attached hereto at Appendix 2.

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction under Texas Government Code section 1205.068, which provides that in a case brought under chapter 1205 "An order or judgment of a court of appeals may be appealed to the supreme court," and that such appeals are "governed by the rules of the supreme court for accelerated appeals in civil cases and take[ ] priority over any other matter, other than writs of habeas corpus . . . ." The Court also has jurisdiction under Texas Government Code section 22.001,

subsections (a)(2), (a)(3), and (a)(6). The Court has jurisdiction under section 22.001(a)(3) because the case involves the construction of Chapter 383, Texas Local Government Code, the act creating County Development Districts, which incorporates the powers of Chapter 375, Texas Local Government Code, the act which creates Municipal Management Districts. Further, the case involves the construction of section 311.005(13), Texas Government Code (the Code Construction Act section which defines "including"). The text of the relevant statutes is attached as Appendix 3.

ISSUES PRESENTED

1. The court of appeals concluded that the power to tax or assess contained in one statute cannot be incorporated into another without using words such as "including the taxing or assessing power." Is this conclusion, which will negatively affect billions of dollars of public finance in Texas, consistent with other Texas cases that construe incorporation of taxing authority and with the rules of statutory interpretation in Texas?

2. Chapter 383 of the Texas Government Code grants development districts all the powers of a municipal management district created under chapter 375 "to the extent not inconsistent with" chapter 383. Is the incorporation into chapter 383 of the assessment powers contained in chapter 375 inconsistent with chapter 383, as the court of appeals held?

STATEMENT OF FACTS

The court of appeals correctly stated the nature of the case. The District is a political subdivision of the State of Texas, created under Chapter 383 of the Local Government Code, the County Development District Act. The purpose of Chapter 383 is to promote "the economic welfare of the residents of this state by providing incentives for the location and development in [small and medium-sized] counties of this state of projects that attract visitors and tourists and that result in employment and economic activity." TEX. LOCAL GOV'T CODE § 383.003(b). In addition to the powers granted under Chapter 383, a development district "has the powers of a municipal management district created under Chapter 375 to the extent not inconsistent with" Chapter 383. *Id.* § 383.061(b).

The District was created by unanimous vote of the Commissioners Court of Kaufman County and confirmed by election in 1996, and is operating pursuant to Chapters 383 and 375 of the Local Government Code (the "Enabling Laws"). C.R. 359-62, 378-81. The $200,000,000 project approved by the Commissioners Court in 1996 included a golf course; a clubhouse; a swim center; a town center, parks, lakes and open spaces; a shopping center; homes; water and sewage facilities; and rights-of-way and streets. C.R. 336-39. The Commissioners Court concluded that the project would attract tourists and visitors to the County. C.R. 360-61.

In 1999, pursuant to authority granted by the Enabling Laws, the District adopted an Order Levying Assessments and Determining Advisability of Capital Improvement Project (the "Assessment Order"). C.R. 728-29, 742-56; *see also* C.R. 399. The Capital

Improvement Project (C.R. 405, 749) addressed in the Assessment Order called for expenditure of $9,000,000 to construct road and street improvements and necessary soil conservation and erosion control within a portion of the District known as "Windmill Farms Phase I." It is undisputed that this capital improvement project was for a portion of the project that had been approved by the Commissioners Court in 1996. In 2000, the District constructed those road and erosion control improvements. Financing for the construction was by means of a Lease Purchase Agreement[1] entered into by the District, which enabled the District to raise funds to pay for the construction of the improvements. C.R. 423-64. The Lease Purchase Agreement was to be paid by assessments against property in the District, based upon the benefit to the property.[2] C.R. 427, 434-35.

In December 2002 and January 2003, the District mailed Assessment Fee Statements to property owners within the District, which statements were due on or before January 31, 2003. C.R. 214. It is the authority for imposition of these assessments that is at issue.

SUMMARY OF ARGUMENT

The court of appeals erred when it held, in essence, that a statute may not incorporate taxing or assessing powers of another statute unless the incorporating statute contains the words "including taxing or assessing powers" or words to that effect. This holding calls into question literally hundreds of almost identical taxing district statutes and billions of dollars of public debt. The holding contradicts the longstanding practice

[1] The Lease Purchase Agreement is a "public security" within the meaning of Section 1205.001, Texas Government Code.

[2] Water and sewer revenues of the District were also pledged to make payments under the Lease Purchase Agreement.

of the bond desk of the Attorney General's Public Finance Division, which has approved billions in public debt based upon statutes almost identical to the one in question here. The holding conflicts with multiple cases from this court and others, holding that incorporating another statute is the legal equivalent of setting the incorporated statute out in full. No Texas case has ever held that incorporation of taxing authority is ineffective without the magic words "including the power to tax". Further, the holding is wrong when it says the power to assess is inconsistent with or will interfere with the power to levy a sales or hotel tax. This holding is entirely without precedent and is illogical, inasmuch as any number of Texas taxing authorities—including the City of Austin—have the ability to exercise all three powers.

ARGUMENT

The court of appeals effectively holds that the taxing power of one statute may not be incorporated by reference in another statute, if the incorporating statute does not use the words "including the power to tax," or an equivalent phrase. In reality, the court of appeals reads the absent words "excluding the power to assess" into the statute. The court of appeals reached its novel conclusion by relying upon cases that say that the power to tax must be "expressly conferred" and by pointing to isolated instances where incorporating statutes have included such phrases. Petitioner does not disagree with the principle that the power to tax or assess must be expressly granted. It is the unsupported extension of that doctrine with which Petitioner disagrees and which will cause dire consequences in the world of Texas public finance.

A. If the Court of Appeals' Opinion is Allowed to Stand, There Will Be a Profound Effect Upon Public Finance Jurisprudence in Texas.

If allowed to stand, the court of appeals' opinion will have a dramatic and chaotic effect upon the more than 600 homes—and homeowners—in Windmill Farms Phase I. It also has a potential effect on hundreds of other Texas taxing and assessing entities of all kinds, involving literally billions of dollars in debt.

As to the immediate effect of this holding, the assessments in question were designed to allow the District to pay the $9 million debt to the Lessor under the Lease Purchase Agreement, Citibank. The District has no other source of revenue, other than water and sewer revenues.[3] The Lease Purchase Agreement provides a right of acceleration that would result in the entire $9,000,000 principal amount of the Lease Purchase Agreement becoming due and payable in the event of a default. C.R. 456. The Board of Directors could then be required to impose an increase in the water and sewer rates of the District to repay the Lease Purchase Agreement. C.R. 456.

If increased water and sewer revenues are not sufficient to pay the Lessor, the Lessor has a right to foreclose on its security—the streets of Windmill Farms. Without funds to pay the debt, the District could face bankruptcy, with endless complications for itself and the homeowners of Windmill Farms.

The opinion also has much broader statewide effect. The two principles of statutory interpretation misapplied by the court of appeals in this case—the proper interpretation of statutes incorporating taxing powers by reference and the proper

[3] The Lease Purchase Agreement also obligates the District to make lease payments from "Pledged Revenues," which are not limited to assessments but also include water and sewer revenues. C.R. 426-27, 435.

interpretation of the commonly used "not inconsistent herewith" language—are critically important in the world of Texas public finance.

There are hundreds of special districts in Texas, including water districts and authorities, road districts, power districts, housing districts, and others. ("Special districts" in this discussion does not include cities, counties, or schools). The debt of these special districts exceeds $20 billion. This sum represents 20% of the total local government debt in Texas. *See* www.brb.state.tx.us.

A large number of these districts are given their power to tax by use of the same legislative tool used here—incorporation by reference. See Appendix 4 for a non-exhaustive list of approximately 90 special districts, in which the enabling legislation incorporates the taxing or assessing power by reference. None of these enabling statutes use the words "including the power to tax" or similar language. For example, the statute creating the Woodlands Road Utility District No. 1 provides:

> The district has all of the rights, powers, privileges, authority, duties, and functions conferred by the general law of this state applicable to road utility districts created under Article III, Section 52, of the Texas Constitution, including Chapter 13, Acts of the 68th Legislature, 2nd Called Session, 1984 (Article 6674r-1, Vernon's Texas Civil Statutes), to the extent those provisions can be made applicable. If any provision of general law is in conflict or inconsistent with this Act, this Act prevails.

Act of May 24, 1991, 72nd Leg., R.S., ch. 816, § 6, 1991 Tex. Gen. Laws 2833.

There are a relatively few statutes which use the words "including power to tax" and a similarly small number which use the word "excluding," but it is clear that the vast majority use neither.

New legislation is constantly being passed, incorporating taxing powers by reference. If either the courts or the attorney general's Public Finance Division[4] were to apply the court of appeals' rule to these statutes, they would be found not to confer taxing authority. The consequence would be a huge dislocation of needed services and financial markets.

B. No Case Supports the Court of Appeals' Conclusion that a Different Rule Applies to Incorporation of Taxing Power.

First, it is clear, and the court of appeals' opinion does not suggest otherwise, that unless incorporation of taxing powers requires use of different tools of statutory interpretation than incorporation of other powers, the power to assess in this case would be considered incorporated. That is, the statutory language of chapter 383 is such that if one were to plug in "power to X" instead of "power to tax" there would be no question but that that such power was incorporated. Texas courts, and indeed state and federal courts around the country, have long held that incorporating another statute by reference gives it effect within the incorporating statute "as though it had been incorporated at full length." *Engel v. Davenport*, 271 U.S. 33, 38, 46 S. Ct. 410 (1926)(citations omitted); *see also Ex Parte Elliott*, 973 S.W.2d 737, 741 (Tex. App.–Austin 1998, pet. ref'd) (citing *Trimmier v. Carlton*, 296 S.W. 1070, 1074, 116 Tex. 572 (1927); *Falkner v. Allied Fin. Co.*, 394 S.W.2d 208, 214 (Tex. Civ. App.–Austin 1965, no writ)).

The only way the court of appeals could reach its conclusion was to apply a new and different rule to incorporation of tax powers. That different rule is that in order to

[4] The Public Finance Division of the Attorney General's Office reviews and approves bonds and similar obligations issued by various governmental entities. *See* www.oag.state.tx.us/agency/general.shtml.

incorporate a power to tax or assess, the incorporating statute must use the words "including the power of tax and assessment." The court of appeals cites no Texas case—or indeed any other state or federal case—for this proposition. Opposing counsel has cited none, and Petitioner has found none.

The court of appeals cites several cases for the general proposition that the power to tax or assess must be clearly stated (Op. p. 10). Petitioner has no quarrel with this principle. It is simply not relevant to or dispositive of this case. The court of appeals only cites, and does not discuss, this line of cases. *Id.* It is illuminating to examine the cases.

First, it is worth noting that none of these cases—cited by the court of appeals or opposing counsel—deals with incorporation by reference, and thus by necessity none deals with "not inconsistent herewith" language. Second, it is notable that in every case cited by the court of appeals, the entity seeking to tax or assess undeniably had some power to do so; the questions are over whether taxing or assessing for a particular purpose was allowable. In the instant case, the purpose is not in question—it is rather the underlying question of whether the District has any power at all to assess.

Ripley v. Trinity River Canal & Conservancy District, 88 S.W.2d 752 (Tex. Civ. App.—Dallas 1935, writ ref'd), dealt with whether the "pre-election" directors of the newly formed Trinity River Canal and Conservancy District had the power to levy an ad valorem tax. The statute creating the district provided that the "pre-election" directors' only power was to cause an election to be held, at which the voters would decide whether

to authorize an ad valorem tax. Before any election was held, the "pre-election" directors levied an ad valorem tax. Not surprisingly, the court held they had no authority to do so.

In *Tri-City Fresh Water Supply District No. 2 v. Mann*, 142 S.W.2d 945 (Tex. 1940), a Fresh Water Supply District had the statutory power to tax for purposes of "conserving, transporting and distributing fresh water." The court held the District had no power to tax for building a fire protection system and a sewage system.

State v. Houston and Texas Central Railway Company, 209 S.W. 820 (Tex. Civ. App.—Galveston 1919, no writ), dealt with whether the Harris County Ship Channel Navigation District had the right to tax the rolling stock of the H&TC railroad. The statute applied only to property "within such navigation district", which the court said meant that the property must be physically within the limits of the district when sought to be taxed. The court held that the railroad's rolling stock, which was spread around the country, was not subject to the tax.

In *Dallas Consolidated Electric Street Railway Company v. City of Dallas*, 260 S.W. 1034 (Tex. Comm'n App. 1924, judgm't adopted), the City had the power to assess for "street improvements", including grading, constructing, or laying out streets. The court held these powers clearly related to surface improvements, and did not allow the City to assess for construction of storm sewers.

These cases clearly do not stand for the proposition that a different rule applies to incorporation by reference when a power to tax or assess is incorporated.

C. The Court of Appeals Failed to Harmonize the Legislative Practice of Specifically Including or Excluding Certain Powers in Incorporating Statutes.

The court of appeals, following Attorney General Opinion JC-0291 (2000), cites for support an example of one statute which incorporated taxing power by saying "including the power to tax." (Op. p. 14-15). But the court of appeals ignores the effect of multiple other statutes cited by Petitioner, in which the Legislature used exactly the opposite structure; that is, where the legislature provided for incorporation of all powers except the taxing power. The court of appeals wholly failed to do any analysis of this conflicting incorporation language. Instead, it simply held: "Because we must narrowly construe the grant of taxing power, we resolve this dispute [i.e., legislative intent] in favor of the homeowners." (Op. p. 16).

This holding is the intellectual equivalent of a court saying "one side cites cases that support its position, the other side cites cases that support its position. Without attempting to examine or distinguish the cases, we therefore hold [for one party or the other]." This is not proper legal analysis. A court must examine and distinguish competing case law and statutory principles—not just call a jumpball and award possession to the side having the arrow.

If the court had engaged in a meaningful analysis of the differing legislative language, it might theoretically have concluded that the words "including power to tax" are an unnecessary redundancy and add no meaning; or it might have concluded that the words "excluding the power to tax" are an unnecessary redundancy and subtract no meaning. But each of these conclusions renders meaningless some of the Legislature's

words, a construction not allowed under Texas law. *Chevron Corp. v. Redmon*, 745 S.W.2d 314, 316 (Tex. 1987) (stating fundamental rule of statutory construction requiring that court must "give effect to all the words of a statute and not treat any statutory language as surplusage if possible.")(citing *Perkins v. State,* 367 S.W.2d 140 (Tex. 1963)). The Code Construction Act, not mentioned by the court of appeals, provides a method for harmonizing these differing approaches:

> "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

TEX. GOV'T CODE § 311.005(13).

It is a truism that when chapter 383 incorporates the powers of chapter 375, it can only incorporate powers contained in Chapter 375. So even if "including power to assess" language had been added to chapter 383, that language could not add any powers not already in chapter 375. So the "including" language must reasonably be held to be, consistent with the Code Construction Act, merely explanatory. On the other hand, "excluding" language is given effect by concluding that certain enumerated powers in the incorporated statute are not brought into the incorporating statute because they are excluded. Therefore, giving effect to all of the Legislature's words can only result in the conclusion that the power to assess is incorporated by chapter 383.

D. The Court of Appeals Misapplied the Phrase "Not Inconsistent With."

The powers of a county development district include "the powers of a municipal management district created under Chapter 375 [governing Municipal Management Districts] to the extent not inconsistent with" Chapter 383. TEX. LOCAL GOV'T CODE §

383.061(b). Chapter 383 thus incorporates by reference the powers of Chapter 375, "to the extent not inconsistent with" Chapter 383, including the power of assessment. The court of appeals misapplied this legislative language in its opinion.

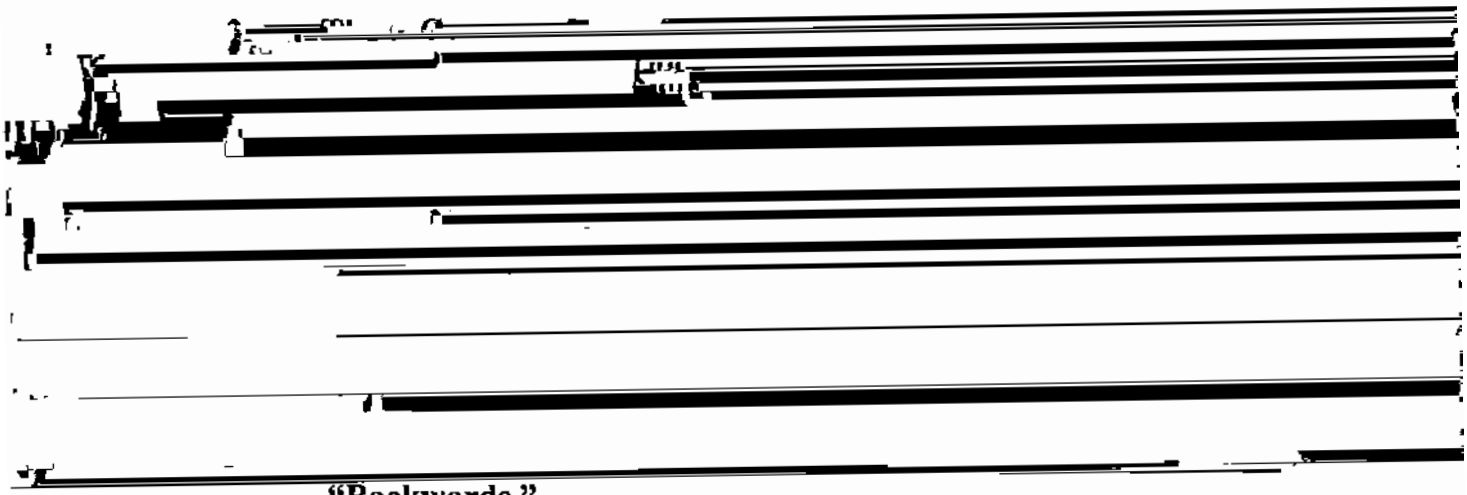
1. The Power of Assessment is not "Inconsistent" with the Other Taxing Powers Granted in Chapter 383.

The court of appeals' conclusion that the legislative grant of power to levy a sales or hotel tax indicates a legislative intent that such a District not have to power to assess is unsupported.

First, if the Legislature wished to exclude the power to assess from the powers adopted, it could have simply used the words it commonly uses to achieve such a result: it could have simply said "excluding the power to assess." There is no reason to try to divine what the Legislature meant.

Second, there is nothing inconsistent about granting a sales tax or hotel tax power and a power to assess. Inconsistent means "in conflict with," or, as Black's Law Dictionary puts it: "Lacking consistency; not compatible with another fact or claim." BLACK'S LAW DICTIONARY 769 (7th ed. 1999). That these powers are not in conflict or inconsistent with one another is amply shown by the fact that any number of cities—including Austin—have all three.

Finally, the court of appeals offers no support for its assertion that having the power to assess would "interfere" with the District's sales tax or hotel tax powers. As a matter of common experience, those three powers peacefully coexist in any number of taxing jurisdictions.



"Backwards."

The court of appeals held that, "Because chapter 375 confers the power to assess for projects that are not within the scope of a county development district, that power is inconsistent with the Act." (Op. p. 17). The court of appeals utterly disregards rules of statutory construction when it concludes that the assessment powers of chapter 375 are "inconsistent" with chapter 383.

At its core, the court of appeals' analysis is this: chapter 383 limits the purpose of county development districts to attracting visitors and tourists; the literal totality of assessment powers of chapter 375 would allow assessments for broader purposes than attracting visitors and tourists; therefore, the assessment powers of chapter 375 are broader than and "inconsistent" with chapter 383—and that, therefore, none are incorporated. This is not an argument or analysis suggested even by the Homeowners, and for good reason.

The court of appeals ignores the words "not inconsistent herewith" in analyzing the extent of chapter 375 powers incorporated into chapter 383, and then, having ignored them where they should be given effect, gives them effect where they should have no application.

Obviously, when chapter 383 adopts the assessment powers of chapter 375 "to the

chapter 383 incorporated all the assessment powers of chapter 375 for any purpose, and then concludes that is too broad, and not consistent with the narrow purposes of chapter 383.

The logic of the court of appeals would mean that one statute may incorporate powers from another only when the allowable purposes of the power in the incorporated statute are the same as or narrower than those in the incorporating statute. The court of appeals cites no cases in support of this proposition, and Petitioner has found none. Such a narrow construction would emasculate the valuable legislative practice of limiting incorporation by reference to matters "not inconsistent herewith."

E. The Courts are not at Liberty to Look Behind the Kaufman County Commissioners Court Conclusion that the Improvement Project Will Attract Tourists and Visitors.

The court of appeals did not hold, and could not hold, that the project funded by the assessments in question was for an improper or unauthorized purpose. The assessments at issue were, without dispute, adopted to fund part of a larger project approved by the Kaufman County Commissioners Court in 1996. The Commissioners Court found that the project would attract tourists and visitors. The actions of the Commissioners Court in establishing the District and approving the project for which the District was created are not subject to review in this action. *See Atlantic Richfield Co. v. Liberty-Danville Fresh Water Supply Dist. No. One of Gregg Co.*, 506 S.W.2d 931 (Tex. Civ. App.—Tyler 1974, writ ref'd n.r.e.)(holding that district court did not have appellate jurisdiction to review order of county commissioners court granting a petition and ordering an election to establish a fresh water supply district).

CONCLUSION

The court of appeals' opinion creates chaos for Petitioner and the homeowners of Windmill Farms, and potential chaos for a significant portion of special district public finance in Texas. The court of appeals is wrong in holding ineffective the common legislative practice of incorporating power to assess by reference, without the words "including the power of assessment." Not only is the holding without case law or statutory support, it is affirmatively at odds with the Code Construction Act. Further, the court of appeals is wrong—both in its manner of analysis and its substantive holding—in saying that the power to assess would "interfere with" or be inconsistent with the power to levy a sales or hotel tax.

PRAYER FOR RELIEF

For the above reasons, the District respectfully asks this Court to grant its Petition for Review, reverse the judgment of the court of appeals, and affirm the judgment of the trial court, and for such other relief to which it may show itself justly entitled.

Respectfully submitted,

KAUFMAN COUNTY DEVELOPMENT
DISTRICT NO. 1, Petitioner

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CERTIFICATE OF SERVICE

On this 3rd day of May 2004, I hereby certify that a true and correct copy of the foregoing document has been served on the following counsel of record via hand delivery or overnight mail:

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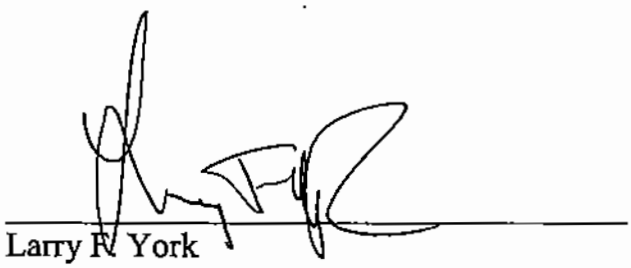

Larry F. York

CAUSE NO. GV300279

IN THE MATTER OF KAUFMAN COUNTY DEVELOPMENT DISTRICT NO. 1	§	IN THE DISTRICT COURT OF
	§	TRAVIS COUNTY, TEXAS
	§	53RD JUDICIAL DISTRICT

and

CAUSE NO. 61997

GARY HENRY, ET AL., Plaintiffs,	§	IN THE DISTRICT COURT
vs.	§	86th JUDICIAL DISTRICT
KAUFMAN COUNTY DEVELOPMENT DISTRICT #1, Defendant.	§	KAUFMAN COUNTY, TEXAS

FINAL JUDGMENT

On May 22, 2003 came to be considered Kaufman County Development District No. 1's First Amended Motion for Summary Judgment and the Cross-Motion for Summary Judgment filed by certain interested parties. The Court, having reviewed the Motions, as well as the pleadings and papers on file herein, and having listened to the arguments of counsel, is of the opinion that Kaufman County Development District No. 1's ("KCDD No. 1's") First Amended Motion for Summary Judgment should be granted, and that the interested parties' Cross-Motion for Summary Judgment should be denied. It is therefore

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DISTRICT CLERK
TRAVIS COUNTY, TEXAS

ORDERED, ADJUDGED, and DECREED that Kaufman County Development District No. 1's First Amended Motion for Summary Judgment should be, and it hereby is, GRANTED,

and that the interested parties' Cross-Motion for Summary Judgment is DENIED. It is declared that KCDD No. 1's July 16, 1999 Order Levying Assessments and Determining Advisability of Capital Improvement Project, and the collections and expenditures of money relating to that Order are legal, valid, binding, and enforceable in accordance with their terms and conditions, and pursuant to proper statutory authority. It is further declared that KCDD No. 1's February 1, 2000 Lease Purchase Agreement Relating to the Kaufman County, Texas Capital Improvement Project (the "Obligation"), and the June 15, 2000 amendment to that Obligation, payments for which are made from the assessments, are legal, valid, binding and enforceable in accordance with their terms and conditions, and pursuant to proper statutory authority.

This judgment, which finally determines each matter raised and each matter that could have been raised in Cause Number GV300279 in this consolidated action, is binding and conclusive against KCDD No. 1, the Attorney General, and any party to the action, whether named and served with notice of the proceedings, or described by Government Code section 1205.041(a). TEX. GOV'T CODE ANN. § 1205.151.

Pursuant to Government Code section 1205.151(c), this judgment is a permanent injunction against the filing by any person of any proceeding, including a counterclaim or affirmative defense in litigation by the District to collect the assessments in question, contesting the validity of the Obligation, or an expenditure of money relating to the Obligation; contesting the validity of any provision made for the payment of the Obligation or of any interest on the Obligation; or any proceeding or adjudicated matter challenging the Obligation or any matter that could have been raised in this action.

The Court's order herein dated February 3, 2003, provided:

> "The District has agreed that it will continue to follow the terms of the Temporary Restraining Order entered in Kaufman County on January 30, 2003, if Plaintiffs filed the $5,000 bond set in that matter, and will not attempt to collect any assessments from the named plaintiffs in *Henry v. Kaufman County Development District* or to cut off water or sewer service for said persons because they have not paid such assessments, until the entry of judgment by the District Court herein. Based upon that agreement and representation of the District, and to make such agreement enforceable, the Court hereby enjoins the District from any attempt to collect any assessments from the named Plaintiffs in *Henry v. Kaufman County Development District* or to cut off water or sewer service for said persons because they have not paid such assessments, until the entry of judgment by the District Court herein."

It is ORDERED, JUDGED and DECREED that the agreed injunction against the District is dissolved, and is of no further force and effect.

Interested Parties are granted leave to file Plaintiffs' First Supplemental Notice of Intent to Use Summary Judgment Evidence and Request for Judicial Notice and the Court has considered same in making its ruling.

Costs are awarded to KCDD No. 1, pursuant to Section 1205.066, Texas Government Code.

It is so ORDERED.

SIGNED THIS 26 day of August, 2003.

Margaret A. Cooper

THE HONORABLE MARGARET COOPER,
JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

By:_____

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TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-03-00549-CV

Gary Henry and Sheree Henry; Brenda Adams-Degraffenreid; Sean Adams and Meshanna Adams; Robert Allen; W. Marie Allen; Betty Andrews; Courtney Armstrong and Cheri Armstrong; Yaser Ayyoub and Sanna Ayyoub; Elizabeth Baker; Eric Bearden; et al., Appellants

v.

Kaufman County Development District No. 1, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 53RD JUDICIAL DISTRICT NO. GV300279, HONORABLE MARGARET A. COOPER, JUDGE PRESIDING

OPINION

This case involves a dispute between Gary and Sheree Henry and other homeowners (collectively the Homeowners)[1] and the Kaufman County Development District No. 1 (the District) over the validity of special assessments levied by the District against the Homeowners. The District was created under the County Development District Act (the Act) to "further[] the public purpose of developing and diversifying the economy of this state by providing incentives for the location and development of projects in certain counties to attract visitors and tourists." *See* Tex. Loc. Gov't Code Ann. §§ 383.001, .002, .021 (West 1999). The District levied the assessments to pay for infrastructure improvements of a residential subdivision in the District. The Homeowners appeal

[1] The appendix to this opinion lists the appellants individually.

the district court's summary judgment in favor of the District, ruling that its order levying the assessments was proper and authorized by statute. Because we hold that the District did not have the authority to levy special assessments, we reverse the district court's summary judgment and remand this cause to the district court for further proceedings not inconsistent with this opinion.

BACKGROUND

The Act authorizes the commissioners court of a small or medium-sized county to create a "county development district" to provide incentives for the location and development of projects "to attract visitors and tourists." *See id.* § 383.002. In 1996, a landowner in Kaufman County filed a petition with the commissioners court seeking the creation of such a district. *See id.* §§ 383.021, .022 (West 1999). The commissioners court accepted the petition and created the District, calling for an election to confirm the creation and approve a local sales and use tax to support it. *See id.* §§ 383.030, .101 (West 1999). The District's creation and the sales and use tax were approved by a majority of the voting residents. *See id.* § 383.034 (West 1999).

Included with the landowner's petition was a vaguely described project to be undertaken by the District: "the enhancement of land, building, equipment, facilities and improvements . . . to promote and develop new or expanded business enterprises which will attract visitors to the District and result in employment and economic activity." The estimated cost of the proposed project was $200,000,000, to include the construction of homes, a swim center, parks, lakes, office buildings, schools, a shopping center, water- and sewage-treatment facilities, streets, and a golf course.

In January 1999, a petition was submitted to the District by the owners of fifty percent or more of the assessed value of the property of the District, requesting the financing of certain services and improvements, known as the Capital Improvement Project (the Project), whose costs were estimated at $15,000,000. The Project encompassed road improvements, soil and erosion control, and similar infrastructure improvements for a residential subdivision located in the District. The District provided public notice in the *Dallas Morning News* of a public hearing to be held in February 1999 to consider the advisability of the requested improvements and the possibility of financing them with assessments. In July 1999, after public notice and the hearing, the District's board reduced the cost of the Project to $9,000,000 and levied special assessments against certain property in the District. The assessments were levied according to the value of the improved property as determined by the District's board and ranged from $9,977 for a 50-foot wide lot to $17,949 for an 80-foot wide lot. The order allowed the assessments to be paid immediately or in annual installments until the year 2025. At that time, the assessed property contained no street improvements or houses, but it had been platted into lots. The District filed the amount of the assessments for every subject parcel in the Kaufman County deed records. The lots were subsequently sold to the Homeowners, who now contest the District's authority to levy the assessments.

After the assessment order was entered, the District entered into a lease-purchase agreement with the KCDD1-Fel Corporation, which agreed to lease the Project to the District and advance the funds necessary to finance it. The District in exchange pledged the assessments it would collect from the Homeowners as lease payments to the corporation.

The Homeowners filed suit against the District in Kaufman County, seeking an injunction against the District's attempts to collect the assessments and asserting various claims, including fraud, violation of their constitutional property rights, and intentional infliction of emotional distress. Three days later, the District filed a suit for declaratory and injunctive relief against the Homeowners in Travis County under chapter 1205 of the government code, seeking a declaration that its assessments were valid and enforceable pursuant to statutory authority. *See* Tex. Gov't Code Ann. § 1205.021 (West 2000) (authorizing district to bring declaratory-judgment action to determine validity of public security and related assessment). The Travis County court abated the action in Kaufman County and then consolidated that action with the District's declaratory-judgment suit.

The District moved for summary judgment, asserting that its assessments were valid because (1) the Act incorporated by reference the power to levy assessments contained in chapter 375 of the local government code, which deals with municipal management districts and specifically authorizes those districts to levy special assessments; (2) the Homeowners failed to exhaust administrative remedies before challenging the validity of the assessments; and (3) Senate Bill 1444, passed in 2001, retroactively validated the assessments. The Homeowners filed a cross-motion for summary judgment, asserting that the District lacked statutory authority to levy the special assessments, that the Homeowners were not required to exhaust administrative remedies, and that Senate Bill 1444 did not validate the assessments. The district court granted the District's motion and denied the Homeowners' motion, declaring the assessments to be valid, binding, enforceable and pursuant to proper statutory authority.

In five issues, the Homeowners assert on appeal that (1) the District failed to prove as a matter of law that it had the statutory authority to levy special assessments; (2) the District failed to prove as a matter of law that the assessments funding the infrastructure of a residential subdivision were for a proper and authorized project that would attract tourists; (3) there is a fact issue as to whether the District complied with mandatory statutory procedures in levying the assessments; (4) the Homeowners were not required to exhaust administrative remedies; and (5) the assessments were not validated by Senate Bill 1444, as claimed by the District.

DISCUSSION

Standard of review

The standard for reviewing a motion for summary judgment is well established: (i) the movant for summary judgment has the burden of showing that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law; (ii) in deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movant will be taken as true; and (iii) every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. *Pustejovsky v. Rapid-Am. Corp.*, 35 S.W.3d 643, 645-46 (Tex. 2000); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985); *Basic Capital Mgmt. v. Dow Jones & Co.*, 96 S.W.3d 475, 480 (Tex. App.—Austin 2002, no pet.). The propriety of summary judgment is a question of law; therefore, we review the trial court's decision *de novo*. *Natividad v. Alexsis, Inc.*, 875 S.W.2d 695, 699 (Tex. 1994); *Texas Dep't of Ins. v. American Home Assurance Co.*, 998 S.W.2d 344, 347 (Tex. App.—Austin 1999, no pet.). A court of appeals should consider all grounds presented by the movant for summary judgment that the trial

court ruled on but may, in the interest of judicial economy, also consider other presented grounds on which the trial court did not rule. *Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 625 (Tex. 1996).

Exhaustion of administrative remedies

The District asserts that the Homeowners may not challenge the validity of the assessments because they failed to exhaust the administrative remedies of section 375.123 of the local government code, which provides the procedure by which a property owner may appeal a special assessment levied by a municipal management district. *See* Tex. Loc. Gov't Code Ann. §§ 375.123, .124 (West 1999) (property owner must file notice of appeal with district's board within thirty days after adoption of assessment and then may appeal board's decision to court). Although the administrative remedies in section 375.123 on their face apply only to municipal management districts, not county development districts, the District bases its argument on the premise that the Act incorporates by reference the assessment power of municipal management districts and therefore, by implication, incorporates the procedures for challenging an assessment. *See id.* §§ 375.111, .123, .124, 383.061 (West 1999). The Homeowners counter that they were not required to exhaust administrative remedies prior to bringing this suit because the Act did not incorporate the assessment power, *see discussion infra*, and even if the Act did incorporate the power, it did not also incorporate the procedure for challenging an assessment. *See id.* More importantly, assert the Homeowners, it is well settled that a party need not exhaust administrative remedies when the issue before the court is a pure question of law. *See Grounds v. Tolar Indep. Sch. Dist.*, 707 S.W.2d 889, 892 (Tex. 1986),

rev'd on other grounds, 856 S.W.2d 417 (Tex. 1993); *City of Austin v. Pendergrass*, 18 S.W.3d 261, 264-65 (Tex. App.—Austin 2000, no pet.).

The sole issue presented in this declaratory-judgment action is whether the assessments were validly levied pursuant to statutory authority.[2] This is purely a question of law, and the answer is dispositive of that issue. Although the Homeowners assert two other reasons that involve mixed questions of law and fact for why the assessments are invalid—that they would be used for an unlawful purpose and that the District failed to comply with mandatory statutory procedures in ordering their levy—the Homeowners pled them in the alternative, and we need not reach them if we hold that the assessments are invalid as a matter of law. Furthermore, we agree with the Homeowners that although the Act incorporates the "powers" of a municipal management district, it does not also incorporate the "procedures" or "remedies" of chapter 375. Section 383.061 of the Act is clear: a county development district "has the *powers* of a municipal management district." *See id.* § 383.061(b) (emphasis added). The Act does not incorporate "the procedures in chapter 375 relating to the challenge of an assessment" or anything similar. We will not read into the Act a provision that is not there. *See In re Bell*, 91 S.W.3d 784, 790 (Tex. 2002) (Courts should not insert words into a statute except to give effect to clear legislative intent.). The Homeowners

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[2] Although the Homeowners' petition, originally filed in Kaufman County and consolidated into the District's declaratory-judgment action in Travis County, alleged several causes of action besides those involving pure questions of law, including fraud and intentional infliction of emotional distress, that cause was severed from the present cause after the Travis County district court granted the District's summary-judgment motion on the issue of the assessments' validity. Thus, the sole issue on appeal concerns the validity of the assessments, not any of the Homeowners' factually based claims.

were not required to exhaust administrative remedies prior to seeking a declaration that the assessments were invalid for lack of statutory authority. We sustain the Homeowners' fourth issue.

Special assessments

The Homeowners assert that the District did not have statutory authority to levy the assessments. They argue first that the Act, which authorizes and governs county development districts, does not itself provide any authority to levy assessments. Therefore, the only possible authority for the assessments must derive from section 383.061(b) of the Act, which provides that a county development district "has the powers of a municipal management district created under Chapter 375 [of the local government code] to the extent not inconsistent with this chapter." Tex. Loc. Gov't Code Ann. § 383.061(b). Section 375.111 provides that a municipal management district "may levy and collect special assessments." *Id.* § 375.111. The Homeowners insist that this incorporation by reference of the powers of chapter 375 does not confer on a county development district the power to levy special assessments for two reasons: (1) the levying of a special assessment is a function of the taxing power of a governmental unit, and such power must be "plainly and unmistakably conferred," *see State v. Houston & Tex. Cent. Ry.*, 209 S.W. 820, 822 (Tex. Civ. App.—Galveston 1919, no writ) (quoting *Brown v. Graham*, 58 Tex. 254, 256 (1883)), and (2) the power to levy special assessments is inconsistent with the Act.

The Homeowners principally rely on an attorney general opinion holding that the Act does not authorize a county development district to levy an ad valorem tax. *See* Op. Tex. Att'y Gen. No. JC-0291 (2000) (hereinafter cited as AG Opinion). Although attorney general opinions are not binding on this Court, we consider them highly persuasive authority and accordingly give them due

consideration. *Hardin County Cmty. Supervision & Corr. Dep't v. Sullivan*, 106 S.W.3d 186, 189-90 (Tex. App.—Austin 2003, pet. denied); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152, 159 (Tex. App.—Austin 2001, no pet.).

The AG Opinion begins with a review of the Act. The statement of legislative intent provides that the Act "furthers the public purpose of developing and diversifying the economy of this state by providing incentives for the location and development of projects in certain counties to attract visitors and tourists." *See* Tex. Loc. Gov't Code Ann. § 383.002. The legislative findings include the following: "Small and medium-sized counties in this state . . . are at a disadvantage in competing with counties in other states for the location and development of projects that attract visitors." *See id.* § 383.003 (West 1999).

Section 383.061 of the Act outlines the powers and duties of a county development district. *See id.* § 383.061. The powers include the ability to "acquire and dispose of projects" and "the powers of a municipal management district created under Chapter 375 to the extent not inconsistent with this chapter." *Id.* "Projects," as defined under section 4B(a)(2) of the Development Corporation Act of 1979, broadly include land, buildings, equipment, facilities, and improvements that pertain to a multitude of purposes, including entertainment, tourism, business enterprise, affordable housing, water-supply facilities, and water-conservation programs. *Id.* § 383.004(8); *see* Tex. Rev. Civ. Stat. Ann. art. 5190.6, § 4B(a)(2) (West Supp. 2004). Subchapter E of the Act authorizes a county development district to issue bonds to defray the costs of a project, and Subchapter F expressly authorizes a district to impose a sales and use tax if approved by a majority of voters. *See* Tex. Loc. Gov't Code Ann. §§ 383.081-.084, .101 (West 1999).

The inquiry that served as the basis for the AG Opinion was submitted by an official from Kaufman County in the wake of the District's order levying these assessments. While the AG Opinion addressed a county development district's authorization to levy an ad valorem tax, in this dispute the question has been framed in terms of the District's authority to levy a special assessment. But the analysis for both questions is grounded in the legal principle that a political subdivision of a state has no inherent power to levy taxes and that such power must be expressly granted by law. *Ripley v. Trinity River Canal & Conservancy Dist.*, 88 S.W.2d 752, 756 (Tex. Civ. App.—Dallas 1935, writ ref'd). The taxing power may only be exercised by a political subdivision if the power has been expressly conferred by the constitution or legislation. *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940). The power to tax must be "plainly and unmistakably conferred." *See Houston & Tex. Cent. Ry.*, 209 S.W. at 822. "The power to levy assessments for the construction of drains can be exercised only when granted in clear and unmistakable terms, and statutes purporting to grant such power must be strictly construed as against those asserting the right to exercise it." *Mann*, 142 S.W.2d at 948 (quoting *Dallas Consol. Elec. St. Ry. Co. v. City of Dallas*, 260 S.W. 1034, 1036 (Tex. Comm'n App. 1924, judgm't adopted).

But, insists the District, the *Mann* line of cases does not apply because a special assessment is simply not a tax. For this proposition it cites *City of Wichita Falls v. Williams*, 26 S.W.2d 910, 911 (Tex. 1930), which noted that "the word 'taxes' . . . refers to ordinary ad valorem taxes only and does not embrace special assessments." *Williams* explained the difference between taxes—"the enforced proportional contribution of persons and property levied by authority of the state for the support of government and for all public needs"—and special assessments—charges

imposed "upon the real or supposed benefit resulting from the improvement of the property on which the specific charge is laid." *Id.* at 912 (quoting *Taylor v. Boyd*, 63 Tex. 533, 540-41 (1885)); *see also Harris County v. Boyd*, 7 S.W. 713, 714 (Tex. 1888) ("Taxation is the enforced contribution of persons and property 'levied by the authority of the State for the support of the government and for all public needs.'"). We agree that special assessments, by their very nature, are to be used for a limited, identified purpose rather than serve as general income to the government to be used "for all public needs." Thus, we agree with the District that special assessments are not "taxes" in the strict sense of that word.

However, *Williams* relegated special assessments to the broad category of "taxation" when it said, "[s]pecial assessments, *as distinguished from other kinds of taxation* . . . ." *Williams*, 26 S.W.2d at 911 (emphasis added). That case also recognized that "the authority for making assessments . . . is derivable from and in exercise of the taxing power." *See id.* at 913 (quoting *Roundtree v. City of Galveston*, 42 Tex. 612, 625 (1874)); *see also Boyd*, 7 S.W. at 714 ("assessments . . . are made under the power to tax—are an exercise of that power"). Moreover, *Williams* is inapplicable to this case because it dealt solely with the question of whether certain constitutional provisions relating to taxation carry over to special assessments; the Court was concerned that if "tax" as it appeared in the constitution included special assessments, "then special assessments would be limited in amount by the very terms found in the Constitution, and the improvement of the streets of our cities would be practically at an end." *Williams*, 26 S.W.2d at 913. This case does not turn on the question of whether taxes and special assessments are one and the same but, rather, on whether special assessments are an exercise of the taxing power. As discussed

above, we are persuaded by the Homeowners' argument that the levying of an assessment is an exercise of the taxing power. *See Houston & Tex. Cent. Ry.*, 209 S.W. at 822; *Maverick County Water Control & Improvement Dist. No. 1 v. State*, 456 S.W.2d 204, 206 (Tex. App.—San Antonio 1970, writ ref'd). Therefore, the power to assess must be clearly and unmistakably granted.

Nowhere in the Act is a county development district expressly authorized to levy assessments or ad valorem taxes. The only tax that the Act expressly authorizes a district to levy is a sales and use tax, with limitations that are laid out in great detail. *See* Tex. Loc. Gov't Code Ann. §§ 383.030, .031, .033, .101, .102-.106 (West 1999). As the AG Opinion notes, "[t]he detailed provision in [the Act] for the sales and use tax suggests that the legislature did not intend county development districts to wield any other taxing authority." AG Opinion at 3. The District would derive its authority to levy assessments through section 383.061, which incorporates by reference the "powers" of a municipal management district created under chapter 375. *See* Tex. Loc. Gov't Code Ann. § 383.061. Chapter 375, subchapter E, entitled "Powers and Duties," includes the power to levy ad valorem taxes to pay for roads. *See id.* § 375.091 (West 1999). Subchapter F, entitled "Assessments," adds to those powers:

> *In addition to the powers provided by Subchapter E*, the board of a [municipal management] district may undertake improvement projects and services that confer a special benefit on all or a definable part of the district . . . [and] *may levy and collect special assessments* on property in that area, based on the benefit conferred.

Id. § 375.111 (emphasis added).[3]

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[3] The Homeowners assert that only subchapter E, and not subchapter F, is incorporated because the title of subchapter E is "Powers and Duties," while the title of subchapter F is

Despite the Act's language incorporating the "powers" of chapter 375, the AG Opinion concluded that county development districts do not have the authority to levy ad valorem taxes.[4] It noted that courts have insisted that the power to tax be expressly conferred and that the power to levy ad valorem taxes was not expressly conferred upon county development districts. Moreover, the detailed provisions restricting the power to impose sales and use taxes suggest that the legislature did not intend a district to "wield any other taxing authority." *See* AG Opinion at 3. The Homeowners argue that imposing a special assessment is an exercise of the taxing power, that the incorporation by reference of the powers in chapter 375 was not sufficiently express to constitute "clear and unmistakable terms," and that the power to levy must be construed against the District. *See Mann*, 142 S.W.2d at 947-48.

The District rejoins that although the power to tax must be expressly conferred, incorporation by reference is sufficient because "the adoption of an earlier statute by reference makes it as much a part of the later act as though it had been incorporated at full length." *Engel v. Davenport*, 271 U.S. 33, 38 (1926); *see B-R Dredging Co. v. Rodriguez*, 564 S.W.693, 696 (Tex.

"Assessments." We disagree. It is the "powers" of a "municipal management district" created under chapter 375 that are incorporated, not the powers of "subchapter E." Thus, any power relating to a municipal management district appearing anywhere in the chapter could reasonably be incorporated, based solely on the first part of the text of section 383.061, providing that a county development district has the powers of a municipal management district. However, as the text indicates, there are other considerations besides merely the initial text of section 383.061.

[4] County development districts "are separate quasi-governmental authorities, which, much like municipal utility or water conservation districts, are created by election, are governed by a board, and have the ability to issue bonds, but *with authority to levy sales and use taxes instead of ad valorem taxes.*" *See* R. Alan Haywood & David Hartman, *Legal Basics for Development Agreements*, 32 Tex. Tech L. Rev. 955, 958 n.23 (2001) (emphasis added).

1978). The District further contends that if the power to assess were not incorporated, the reference to chapter 375 would have little or no meaning, and statutory language is presumed to have some meaning and should be given any reasonable interpretation that will do so. *See Harris County Dist. Attorney's Office v. J.T.S.*, 807 S.W.2d 572, 574 (Tex. 1991).

We conclude that the reference has meaning without incorporating the power to assess because section 375.092 lists several other "specific powers" of a municipal management district for which there is no comparable provision in the Act. *See* Tex. Loc. Gov't Code Ann. § 375.092 (West 1999). These specific powers include perpetual succession, acquiring and disposing of real and personal property, entering into contracts with the United States and its subdivisions, and procuring insurance as deemed advisable by the district's board. *See id.*

Secondly, the Attorney General cited by analogy certain sections of chapter 376 (governing particular municipal management districts) in which the legislature has vested specific municipal management districts with the powers of a district created under chapter 375 but also with the express power to levy ad valorem taxes in accordance with chapter 375, concluding that "[i]f the legislature had intended to vest county development districts with the [same] authority . . . it would have done so expressly, as it did in [those sections]." *See* AG Opinion at 4. The Homeowners cite these same sections of the local government code, including section 376.012, which provides: "(a) The [Houston Downtown Management D]istrict has . . . (2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375 . . . [and] (5) the power to impose ad valorem taxes, assessments, or impact fees in accordance with Chapter 375 to provide improvements and services for a project or activity the district is authorized to acquire, construct, improve, or provide."

See Tex. Loc. Gov't Code Ann. § 376.012 (West 1999); *see also id.* §§ 376.052, .090, .122, .221, (West 1999). The Homeowners note that if the sections' broad incorporation of the powers of chapter 375 included the power to assess, it would have been unnecessary to state these powers again, individually. If the incorporation language referencing chapter 376 included the powers to levy assessments or ad valorem taxes, the subsection explicitly allowing districts to exercise those powers would be redundant and mere surplusage. A statutory construction that creates a redundancy is to be avoided. *See Larry Koch, Inc. v. Tex. Natural Res. Conservation Comm'n*, 52 S.W.3d 833, 837-38 (Tex. App.—Austin 2001, pet. denied). Section 376.012 and the other sections referenced above illustrate that the legislature specifically and expressly grants the power of taxation when it intends to do so.

The District, on the other hand, urges that when the legislature uses a general incorporation of powers but intends to *exclude* taxing authority, it specifically does so, citing several bills with language such as: "The [Salt Fork Water Quality D]istrict has all of the rights, privileges, powers, and duties provided by the general laws of this state . . . applicable to special utility districts . . . *except that the district may not levy or collect taxes*." *See* Act of Apr. 22, 1999, 76th Leg., R.S., ch. 1139, § 6(b), 1999 Tex. Gen. Laws 4033, 4034 (emphasis added); *see also* Act of May 29, 1997, 75th Leg., R.S., ch. 1066, § 5, 1997 Tex. Gen. Laws 4059, 4059 (Guadalupe County Groundwater Conservation District has "all of the rights, powers, privileges, authority, functions, and duties provided by the general laws of this state, including Chapters 36 and 49, Water Code . . . [but] may not impose a tax or fee"); Act of May 19, 1997, 75th Leg., R.S., ch. 589, § 6, 1997 Tex. Gen. Laws 2054, 2059 (Chambers County-Cedar Bayou Navigation District has all the powers of districts

created under chapters 60,62, and 63 of the water code but does not have the power to levy ad valorem taxes unless they have been approved by a majority of voters.). Because we must narrowly construe the grant of taxing power, we resolve this dispute in favor of the Homeowners' position. Moreover, we hold that the power to make special assessments is "inconsistent with" the Act, as discussed below.

The Homeowners note that if the incorporation by reference in section 383.061 broadly covered every conceivable power appearing in chapter 375, it would also incorporate the power to issue bonds appearing in section 375.201. *See* Tex. Loc. Gov't Code Ann. § 375.201 (West 1999). However, the Act expressly grants a county development district the authority to issue bonds, but specifically incorporates sections 375.201 through 375.208, concerning the details of bond requirements, pledges, and refunds. *See id.* §§ 375.201-.208, 383.081 (West 1999). Again, the specific inclusion in the Act of the authority to issue bonds would be redundant if the "powers" incorporated earlier in the chapter already included that power. Such redundancy is an indication that we best fulfill legislative intent by narrowly construing the "powers of a municipal management district" incorporated by reference in section 383.061.

Finally, section 383.061(b) confers on county development districts "the powers of a municipal management district created under Chapter 375 *to the extent not inconsistent with this chapter*." *See id.* § 383.061(b) (emphasis added). The Homeowners argue that the power to assess is inconsistent with the Act. The purpose of the Act is to "develop[] and diversify[] the economy of this state by providing incentives for the location and development of projects in certain counties *to attract visitors and tourists*" because small and medium-sized counties are "at a disadvantage in

competing with counties in other states for the location and development of *projects that attract visitors*." *See id.* § 383.002, .003 (emphasis added). Clearly, the purpose of a county development district is to undertake projects that will attract tourists and visitors so that the economy will benefit. Projects undertaken to attract tourists and visitors are the type of projects authorized and countenanced by the Act, and the power to undertake such projects is specifically granted to county development districts. *See id.* § 383.061 ("district may acquire and dispose of projects"). Projects undertaken for other purposes would be, therefore, inconsistent with the chapter. Chapter 375 grants municipal management districts the power to undertake improvement projects and services *that confer a special benefit* on all or part of the district, and secondarily the power to levy assessments *for such projects*. *See id.* § 375.111. Because chapter 375 confers the power to assess for projects that are not within the scope of a county development district, that power is inconsistent with the Act. Furthermore, we agree with the Attorney General's conclusion that the Act's detailed provisions for sales and use taxes reveal a legislative intent that county development districts not "wield any other taxing authority." *See* AG Opinion at 3. Inferring by reference a power to tax or levy assessments would interfere with the intentional and detailed taxation scheme set forth in the Act.

Because the power to levy assessments is not unmistakably conferred upon county development districts and because the power to levy assessments for projects that confer a special benefit could be inconsistent with the purposes of the Act, we hold that the District did not have statutory authority to levy the assessments. We sustain the Homeowners' first issue.[5]

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[5] Because we conclude that the assessments were not authorized by the Act as a matter of law, we need not reach the Homeowners' second and third issues—whether the assessments were

Senate Bill 1444

The trial court noted the ground on which it granted summary judgment for the District—that it had statutory authority to levy the assessments under section 383.061—and therefore did not rule on the District's alternate ground—that Senate Bill 1444 retroactively validated the assessments. However, we proceed to a discussion of this issue in the interest of judicial economy. *See Cates*, 927 S.W.2d at 625. One of the District's arguments at district court was that Senate Bill 1444, adopted by the legislature in 2001, retroactively validated the assessments. *See* Act of May 26, 2001, 77th Leg., R.S., ch. 1423, § 42, 2001 Tex. Gen. Laws 5069, 5079 (validating and confirming acts of water districts taken within two years prior to act's effective date of June 17, 2001). The Homeowners retort that the act applies only to "conservation and reclamation districts" and not to county development districts. The District rejoins that the phrase "conservation and reclamation districts" includes county development districts because the act applies to "conservation and reclamation district[s] *created under Section 52, Article III, and Section 59, Article XVI, Texas Constitution*," and that county development districts "serve the purpose of Section 59, Article XVI, and Section 52, Article III, Texas Constitution." *See id.* (emphasis added); Tex. Loc. Gov't Code Ann. § 383.003(c).

The first constitutional provision cited in Senate Bill 1444 is broad and, on its own, could authorize various types of districts:

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for an authorized purpose and whether the District complied with mandatory procedures in ordering the levy.

> Under legislative provision, any county . . . may issue bonds or otherwise lend its credit . . . and levy and collect taxes to pay the interest thereon . . . for the following purposes[: to improve rivers, creeks, and streams and construct and maintain pools, lakes, and reservoirs for irrigation and navigation purposes and to construct, maintain, and operate roads and turnpikes].

Tex. Const. art. 3, § 52(b). The second provision speaks directly to a particular kind of district but also about the general public interest in conserving and developing the state's natural resources. It declares, "the conservation and development of all of the natural resources of this State . . . [are] public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto" and "[t]here may be created . . . conservation and reclamation districts" to accomplish the purposes of the amendment. *Id.* art. 16, § 59(a), (b). Thus, a "conservation and reclamation district *created* under" these two constitutional provisions must be a conservation and reclamation district that in some way conserves or develops natural resources while also improving or constructing waterways or roads. On the other hand, the legislative findings supporting the Act, which authorizes the creation of county development districts, state:

> The creation of development districts *is essential to the accomplishment* of Section 52-a, Article III, Texas Constitution [legislature may provide for programs that further the purpose of development and diversification of the state's economy], *and to the accomplishment of* the other public purposes stated in this chapter [developing and diversifying the economy of the state by providing incentives for projects that will attract visitors and tourists] and *further serves the purpose of* Section 59, Article XVI, and Section 52, Article III, Texas Constitution.

Tex. Loc. Gov't Code Ann. § 383.003 (emphasis added).

Although a county development district may incidentally or further serve the public purpose of improving or constructing waterways or roads or conserving and developing natural

resources, such overlap in purpose does not transform a county development district into a kind of district that it is not. County development districts are created under the Act; they are not created under section 52, article 3 and section 59, article 16 of the constitution just because their creation furthers the purpose of those provisions. Although some of the same constitutional language provides the impetus for the creation of two different kinds of districts—county development versus conservation and reclamation—this does not mean that the districts are functionally equivalent. County development districts derive from a section of the constitution that specifically allows for their creation to support economic development. No part of the Act speaks to the purpose of conserving or reclaiming water and other resources—although a project of a county development district that happens to conserve or develop natural resources would certainly not be prohibited. Thus, because the legislation refers by name to a particular type of district created under particular constitutional provisions, it cannot include a different type of district created under a separate statute and pursuant to a different constitutional provision. Although one district may be "created under" a certain constitutional provision, while another district "further serves the purpose" of that same constitutional provision, they remain distinct.

Furthermore, the title of Senate Bill 1444 reveals an intent that it apply only to water districts: "An Act relating to the general powers and authority of water districts." *See* Act of May 26, 2001, 77th Leg., R.S., ch. 1423, 2001 Tex. Gen. Laws 5069. Bills cannot contain more than one subject, and their titles shall give the public reasonable notice of that subject. *See* Tex. Const. art. III, § 35(a), (b). Although the District notes that no act of the legislature may be held *void* for a

deficiency in title, Tex. Const. art. III, § 35(b), (c), *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444, 452 (Tex. 2000), here the question is not whether Senate Bill 1444 is void, but whether it applies to county development districts. Because the legislature is presumed to have intended compliance with the constitution, *see Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 715 (Tex. 1990), we hold that Senate Bill 1444 does not apply to county development districts, but only to water districts, specifically conservation and reclamation districts. Therefore, Senate Bill 1444 did not retroactively validate the assessments levied here. We sustain the Homeowners' fifth issue and hold that the assessments are invalid because they were neither authorized by incorporation nor retroactively validated. The trial court, therefore, erred in granting summary judgment for the District.

CONCLUSION

The Homeowners were not required to exhaust administrative remedies because the issue before the trial court was purely a question of law and because the Act did not incorporate the procedures of chapter 375. The District did not have statutory authority to levy special assessments against the Homeowners under the incorporation by reference in section 383.061 of the powers of chapter 375 because the special-assessment power is not unmistakably conferred and is inconsistent with the Act. Likewise, Senate Bill 1444, passed in 2001, did not retroactively validate the District's special assessments because the bill applied only to conservation and reclamation districts, not county development districts. The trial court, therefore, erred in granting summary judgment in favor of the District and against the Homeowners. We hold that the Homeowners were entitled to summary judgment in their favor that the order levying the assessments was invalid. However,

because the trial court's order ruled on other issues not before us on appeal,[6] we remand this cause for further proceedings not inconsistent with this opinion.

Bea Ann Smith, Justice

Before Chief Justice Law, Justices B. A. Smith and Patterson

Reversed and Remanded

Filed: March 18, 2004

[6] The trial court's order also declared that the lease-purchase agreement and its subsequent amendment, the payments under which were to be made from the assessments, were valid and pursuant to proper statutory authority. The Homeowners have not asserted any issues with respect to this agreement on appeal and have not asked this Court to render summary judgment in their favor.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

JUDGMENT RENDERED MARCH 18, 2004

NO. 03-03-00549-CV

Gary Henry and Sheree Henry; Brenda Adams-Degraffenreid; Sean Adams and Meshanna Adams; Robert Allen; W. Marie Allen; Betty Andrews; Courtney Armstrong and Cheri Armstrong; Yaser Ayyoub and Sanna Ayyoub; Elizabeth Baker; Eric Bearden; et al., Appellants

v.

Kaufman County Development District No. 1, Appellee

APPEAL FROM 53RD DISTRICT COURT OF TRAVIS COUNTY
BEFORE CHIEF JUSTICE LAW, JUSTICES B. A. SMITH AND PATTERSON
REVERSED AND REMANDED -- OPINION BY JUSTICE B. A. SMITH

THIS CAUSE came on to be heard on the record of the court below, and the same being considered, because it is the opinion of this Court that there was error in the trial court's summary judgment: **IT IS THEREFORE** considered, adjudged and ordered that the summary judgment of the trial court is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion. It is **FURTHER** ordered that the appellee (appellants are listed by name in the appendix attached to this Court's judgment in this case) pay all costs relating to this appeal, both in this Court and the court below; and that this decision be certified below for observance.

STATUTES TO BE CONSIDERED

County Development Districts

TEXAS GOVERNMENT CODE § 383.061

(a) A district may acquire and dispose of projects and has all of the other powers, authority, rights, and duties that will permit accomplishment of the purposes for which the district was created.

(b) **The district has the powers of a municipal management district created under Chapter 375 to the extent not inconsistent with this chapter.**

(c) The district has the power to provide for general promotion and tourist advertising of the district and its vicinity and to conduct a marketing program to attract visitors, any of which may be conducted by the district pursuant to contracts for professional services with persons or organizations selected by the district. (emphasis added)

Municipal Management Districts

TEXAS GOVERNMENT CODE § 375.111

In addition to the powers provided by Subchapter E, the board of a district may undertake improvement projects and services that confer a special benefit on all or a definable part of the district. **The board may levy and collect special assessments on property in that area, based on the benefit conferred by the improvement project or services, to pay all or party of the cost of the project and services.** If the board determines that there is a benefit to the district, the district may provide improvements and services to an area outside the boundaries of the district. (emphasis added)

TEXAS GOVERNMENT CODE § 375.112

(a) An improvement project or services provided by the district may include the construction, acquisition, improvement, relocation, operation, maintenance, or provision of:

(1) landscaping; lighting, banners, and signs; streets and sidewalks; pedestrian skywalks, crosswalks, and tunnels; seawalls; marinas; drainage and navigation improvements; pedestrian malls; solid waste, water, sewer, and power facilities,

including electrical, gas, steam, cogeneration, and chilled water facilities; parks, plazas, lakes, rivers, bayous, ponds, and recreation and scenic areas; historic areas; fountains; works of art; off-street parking facilities, bus terminals, heliports, and mass transit systems; and the cost of any demolition in connection with providing any of the improvement projects;

(2) other improvements similar to those described in Subdivision (1);

(3) the acquisition of real property or any interest in real property in connection with an improvement, project, or services authorized by this chapter, Chapter 54, Water Code, or Chapter 365 or 441, Transportation Code;

(4) special supplemental services for advertising, economic development, promoting the area in the district, health and sanitation, public safety, maintenance, security, business recruitment, development, elimination or relief of traffic congestion, recreation, and cultural enhancement; and

(5) expenses incurred in the establishment, administration, maintenance, and operation of the district or any of its improvements, projects or services.

(b) An improvement project on two or more streets or two or more types of improvements may be included in one proceeding and financed as one improvement project.

Code Construction Act

TEXAS GOVERNMENT CODE § 311.005(13)

The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

. . .

(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components are not expressed and included.

SPECIAL DISTRICTS WITH TAXING AUTHORITY INCORPORATED BY REFERENCE[1]

1. Act of May 26, 1993, 73rd Leg., R.S., ch. 959, § 3, 1993 Tex. Gen. Laws 4192. (Beach Road Municipal Utility District)

2. Act of May 23, 1951, 52nd Leg., R.S., ch. 418, 1951 Tex. Gen. Laws 766-67. (Brookshire Municipal Water District)

3. Act of May 26, 1971, 62nd Leg., R.S., ch. 703, 1971 Tex. Gen. Laws 2320-21. (Burleson County Municipal Utility District No. 1)

4. Act of May 13, 1971, 62nd Leg., R.S., ch. 347, 1971 Tex. Gen. Laws 1320-21. (Cibolo Creek Municipal Authority)

5. Act of May 2, 1985, 69th Leg., R.S., ch. 184, § 3, 1985 Tex. Gen. Laws 752. (Cinco Municipal Utility District No. 1)

6. Act of May 2, 1985, 69th Leg., R.S., ch. 185, § 10, 1985 Tex. Gen. Laws 755. (Cinco Municipal Utility District No. 2)

7. Act of May 2, 1985, 69th Leg., R.S., ch. 186, § 7, 1985 Tex. Gen. Laws 757. (Cinco Municipal Utility District No. 3)

8. Act of May 2, 1985, 69th Leg., R.S., ch. 188, § 8, 1985 Tex. Gen. Laws 763. (Cinco Municipal Utility District No. 5)

9. Act of May 2, 1985, 69th Leg., R.S., ch. 189, § 3, 1985 Tex. Gen. Laws 766. (Cinco Municipal Utility District No. 6)

10. Act of May 2, 1985, 69th Leg., R.S., ch. 190, § 7, 1985 Tex. Gen. Laws 769. (Cinco Municipal Utility District No. 7)

11. Act of May 2, 1985, 69th Leg., R.S., ch. 191, § 3, 1985 Tex. Gen. Laws 772. (Cinco Municipal Utility District No. 8)

12. Act of May 2, 1985, 69th Leg., R.S., ch. 192, § 8, 1985 Tex. Gen. Laws 775. (Cinco Municipal Utility District No. 9)

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[1] The examples contained in this chart are from special laws, which are not codified in Vernon's Statutes, and appear only in the Session Laws.

13. Act of April 18, 1963, 58th Leg., R.S., ch. 101, 1963 Tex. Gen. Laws 173. (Clear Lake City Water Authority)

14. Act of May 29, 1969, 61st Leg., R.S., ch. 751, 1969 Tex. Gen. Laws 2184. (CNP Utility District)

15. Act of May 20, 1965, 59th Leg., R.S., ch. 598, 1965 Tex. Gen. Laws 1297. (Commodore Cove Improvement District)

16. Act of May 29, 1971, 62nd Leg., R.S., ch. 686, 1971 Tex. Gen. Laws 2243. (Cy-Champ Public Utility District)

17. Act of April 24, 1969, 61st Leg., R.S., ch. 146, 1969 Tex. Gen. Laws 414. (Cypress Creek Utility District)

18. Act of May 6, 1971, 62nd Leg., R.S., ch. 195, 1971 Tex. Gen. Laws 1009. (Cypress Forest Public Utility District)

19. Act of May 26, 1971, 62nd Leg., R.S., ch. 654, 1971 Tex. Gen. Laws 2128. (Cypress-Klein Utility District)

20. Act of May 16, 1991, 72nd Leg., R.S., ch. 214, § 6, 1991 Tex. Gen. Laws 885. (Dallas County Utility and Reclamation District No. 1)

21. Act of May 26, 1971, 62nd Leg., R.S., ch. 697, 1971 Tex. Gen. Laws 2281-82. (Dowdell Public Utility District)

22. Act of May 27, 1969, 61st Leg., R.S., ch. 600, 1969 Tex. Gen. Laws 1790-91. (East Plantation Utility District)

23. Act of May 26, 1971, 62nd Leg., R.S., ch. 648, 1971 Tex. Gen. Laws 2104. (El Dorado Utility District)

24. Act of May 18, 1961, 57th Leg., R.S., ch. 210, 1961 Tex. Gen. Laws 434-35. (El Paso County Water Control and Improvement District--Westway)

25. Act of May 24, 1983, 68th Leg., R.S., ch. 722, 1983 Tex. Gen. Laws 4483-84. (Emerald Bay Municipal Utility District)

26. Act of May 22, 1971, 62nd Leg., R.S., ch. 584, 1971 Tex. Gen. Laws 1931. (Emerald Forest Utility District)

27. Act of May 29, 1971, 62nd Leg., R.S., ch. 700, 1971 Tex. Gen. Laws 2290-91. (Encanto Real Utility District)

28. Act of May 28, 1987, 70th Leg., R.S., ch. 595, § 7, 1987 Tex. Gen. Laws 2323. (Frisco Municipal Utility District No. 1)

29. Act of May 22, 1969, 61st Leg., R.S., ch. 616, 1969 Tex. Gen. Laws 1829-30. (Greenwood Utility District)

30. Act of April 16, 1981, 67th Leg., R.S., ch. 104, 1981 Tex. Gen. Laws 247-48. (Haciendas Del Norte Water Improvement District)

31. Act of May 27, 1983, 68th Leg., R.S., ch. 704, 1983 Tex. Gen. Laws 4386-87. (Harris County Municipal Utility District No. 233)

32. Act of May 15, 1969, 61st Leg., R.S., ch. 391, 1969 Tex. Gen. Laws 1234, 1237. (Harris County Utility District No. 6)

33. Act of May 20, 1971, 62nd Leg., R.S., ch. 445, 1971 Tex. Gen. Laws 1614-15. (Harris County Utility District No. 14)

34. Act of May 26, 1971, 62nd Leg., R.S., ch. 642, 1971 Tex. Gen. Laws 2088. (Harris County Utility District No. 15)

35. Act of April 24, 1969, 61st Leg., R.S., ch. 144, 1969 Tex. Gen. Laws 394-95. (Harris County Water Control and Improvement District No. 132)

36. Act of May 22, 1963, 58th Leg., R.S., ch. 246, 1963 Tex. Gen. Laws 671-72. (Harris County Water Control and Improvement District—Fondren Road)

37. Act of May 25, 1985, 69th Leg., R.S., ch. 683, 1985 Tex. Gen. Laws 2469. (Homestead Municipal Utility District No. 1)

38. Act of May 24, 1969, 61st Leg., R.S., ch. 838, 1969 Tex. Gen. Laws 2497-98. (Horsepen Bayou Municipal Utility District)

39. Act of May 24, 1961, 57th Leg., R.S., ch. 533, 1961 Tex. Gen. Laws 1180-81. (Hull Fresh Water Supply District)

40. Act of May 26, 1983, 68th Leg., R.S., ch. 1073, 1983 Tex. Gen. Laws 5661-64. (Irving Flood Control District Section III)

41. Act of May 23, 1989, 71st Leg., R.S., ch. 741, § 8, 1989 Tex. Gen. Laws 3317. (Isaacson Municipal Utility District)

42. Act of May 26, 1971, 62nd Leg., R.S., ch. 675, 1971 Tex. Gen. Laws 2202. (Jackrabbit Road Public Utility District)

43. Act of April 29, 1955, 54th Leg., R.S., ch. 245, 1955 Tex. Gen. Laws 677-83. (Jefferson County Control and Improvement District No. 10)

44. Act of May 20, 1971, 62nd Leg., R.S., ch. 411, 1971 Tex. Gen. Laws 1544-45. (Klein Public Utility District)

45. Act of May 8, 1969, 61st Leg., R.S., ch. 306, 1969 Tex. Gen. Laws 940-43. (Langham Creek Utility District)

46. Act of May 26, 1965, 59th Leg., R.S., ch. 584, 1965 Tex. Gen. Laws 1272-75. (Lazy River Improvement District)

47. Act of May 29, 1971, 62nd Leg., R.S., ch. 659, 1971 Tex. Gen. Laws 2142. (Longhorn Town Utility District)

48. Act of May 29, 1971, 62nd Leg., R.S., ch. 685, 1971 Tex. Gen. Laws 2239. (Louetta North Public Utility District)

49. Act of May 29, 1969, 61st Leg., R.S., ch. 749, 1969 Tex. Gen. Laws 2165-67. (Louetta Road Utility District)

50. Act of May 22, 1971, 62nd Leg., R.S., ch. 554, 1971 Tex. Gen. Laws 1876-77. (Luce Bayou Public Utility District)

51. Act of May 24, 1973, 63rd Leg., R.S., ch. 388, 1973 Tex. Gen. Laws 856. (Lumberton Municipal Utility District)

52. Act of May 29, 1971, 62nd Leg., R.S., ch. 658, 1971 Tex. Gen. Laws 2139. (Malcomson Road Utility District)

53. Act of May 26, 1971, 62nd Leg., R.S., ch. 664, 1971 Tex. Gen. Laws 2165. (Mason Creek Utility District)

54. Act of May 20, 1971, 62nd Leg., R.S., ch. 423, 1971 Tex. Gen. Laws 1564-65. (Memorial Point Utility District)

55. Act of January 29, 1962, 57th Leg., 3d C.S., ch. 20, 1962 Tex. Gen. Laws 56-7.
(Memorial Villages Water Authority)

56. Act of May 29, 1971, 62nd Leg., R.S., ch. 693, 1971 Tex. Gen. Laws 2265.
(Montgomery County Municipal Utility District No. 6)

57. Act of May 29, 1971, 62nd Leg., R.S., ch. 694, 1971 Tex. Gen. Laws 2268.
(Montgomery County Municipal Utility District No. 7)

58. Act of May 29, 1971, 62nd Leg., R.S., ch. 704, 1971 Tex. Gen. Laws 2326.
(Montgomery County Municipal Utility District No. 9)

59. Act of May 21, 1985, 69th Leg., R.S., ch. 756, 1985 Tex. Gen. Laws 2589.
(Montgomery County Municipal Utility District No. 67)

60. Act of May 26, 1971, 62nd Leg., R.S., ch. 635, 1971 Tex. Gen. Laws 2065.
(Montgomery County Utility District No. 2)

61. Act of May 26, 1971, 62nd Leg., R.S., ch. 634, 1971 Tex. Gen. Laws 2061.
(Montgomery County Utility District No. 3)

62. Act of May 13, 1971, 62nd Leg., R.S., ch. 344, 1971 Tex. Gen. Laws 1309.
(Montgomery County Utility District No. 4)

63. Act of April 24, 1969, 61st Leg., R.S., ch. 139, 1969 Tex. Gen. Laws 371-74.
(North Belt Utility District)

64. Act of May 26, 1971, 62nd Leg., R.S., ch. 696, 1971 Tex. Gen. Laws 2278-79.
(North Park Public Utility District)

65. Act of May 22, 1969, 61st Leg., R.S., ch. 617, 1969 Tex. Gen. Laws 1838-39, 1841.
(Parkway Utility District)

66. Act of January 24, 1962, 57th Leg., 3d C.S., ch. 38, 1962 Tex. Gen. Laws 114.
(Pettus Municipal Utility District)

67. Act of May 29, 1971, 62nd Leg., R.S., ch. 650, 1971 Tex. Gen. Laws 2117.
(Pine Village Public Utility District)

68. Act of May 15, 1969, 61st Leg., R.S., ch. 356, 1969 Tex. Gen. Laws 1091-92, 1094.
(Ponderosa Forest Utility District)

69. Act of May 15, 1969, 61st Leg., R.S., ch. 397, 1969 Tex. Gen. Laws 1278-79, 1281.
(Quail Valley Utility District)

70. Act of April 24, 1969, 61st Leg., R.S., ch. 145, 1969 Tex. Gen. Laws 403-06.
(Rayford Road Municipal Utility District)

71. Act of May 29, 1971, 62nd Leg., R.S., ch. 689, 1971 Tex. Gen. Laws 2255.
(Rolling Fork Public Utility District)

72. Act of May 17, 1973, 63rd Leg., R.S., ch. 379, 1973 Tex. Gen. Laws 835, 843.
(Sabine Pass Port Authority)

73. Act of May 26, 1971, 62nd Leg., R.S., ch. 679, 1971 Tex. Gen. Laws 2217.
(Sagemeadow Utility District)

74. Act of May 26, 1965, 59th Leg., R.S., ch. 520, 1965 Tex. Gen. Laws 1078, 1080.
(San Leon Municipal Utility District)

75. Act of May 27, 1989, 71st Leg., R.S., ch. 527, 1989 Tex. Gen. Laws 1737, 1739.
(Seis Lagos Utility District)

76. Act of May 20, 1971, 62nd Leg., R.S., ch. 412, 1971 Tex. Gen. Laws 1547-48.
(Shasla Public Utility District)

77. Act of May 26, 1971, 62nd Leg., R.S., ch. 699, 1971 Tex. Gen. Laws 2287.
(Spencer Road Public Utility District)

78. Act of May 26, 1971, 62nd Leg., R.S., ch. 630, 1971 Tex. Gen. Laws 2052.
(Spring Creek Forest Public Utility District)

79. Act of May 29, 1971, 62nd Leg., R.S., ch. 682, 1971 Tex. Gen. Laws 2228.
(Spring Creek Utility District)

80. Act of May 22, 1969, 61st Leg., R.S., ch. 846, 1969 Tex. Gen. Laws 2535-36, 2538.
(Tattor Road Municipal District)

81. Act of May 20, 1971, 62nd Leg., R.S., ch. 456, 1971 Tex. Gen. Laws 1639-40.
(Thunderbird Utility District)

82. Act of May 15, 1969, 61st Leg., R.S., ch. 395, 1969 Tex. Gen. Laws 1258-61.
(Timber Lane Utility District)

83. Act of May 26, 1965, 59th Leg., R.S., ch. 521, 1965 Tex. Gen. Laws 1083. (Timberlake Improvement District)

84. Act of May 24, 1995, 74th Leg., R.S., ch. 791, § 1.03, 1995 Tex. Gen. Laws 4110. (Travis County Municipal Utility District No. 3)

85. Act of May 24, 1995, 74th Leg., R.S., ch. 791, § 2.03, 1995 Tex. Gen. Laws 4120. (Travis County Municipal Utility District No. 4)

86. Act of May 13, 1971, 62nd Leg., R.S., ch. 352, 1971 Tex. Gen. Laws 1328. (Varner Creek Utility District)

87. Act of May 29, 1989, 71st Leg., R.S., ch. 1212, § 7, 1989 Tex. Gen. Laws 4921. (West Travis County Municipal District No. 3)

88. Act of May 26, 1971, 62nd Leg., R.S., ch. 687, 1971 Tex. Gen. Laws 2246. (Windfern Forest Utility District)

89. Act of May 22, 1953, 53rd Leg., R.S., ch. 268, 1953 Tex. Gen. Laws 702-03. (Wise County Water Supply District)