
PUBLIC UTILITIES - TEXAS

Republic Power Partners, L.P. v. City of Lubbock

Court of Appeals of Texas, Amarillo - February 5, 2014 - S.W.3d - 2014 WL 486411

Private business entity that had a development agreement with municipal power agency to form a partnership to develop, finance, and operate future electric energy generation and transmission facility brought action against city, which was member of municipal power agency, and the agency for breach of development agreement. The District Court granted city's plea to the jurisdiction and denied agency's plea to the jurisdiction. Private business entity appealed.

The Court of Appeals held that:

- City had sovereign immunity from liability from action, and
- City was not a party to the development agreement, and, thus, did not waive sovereign immunity by the fact that agency entered into agreement.

The legislature could have incorporated the proprietary/governmental distinction into the statutory waiver scheme for contract claims, however, it chose not to do so, and legislature specifically sought to waive immunity to suit for certain claims arising under written contracts with governmental entities when the action fell within the category of contracts for which immunity was waived.

City was not a party to development agreement between municipal power agency and private business entity under which entity was required to form a partnership to develop, finance, and operate future electric energy generation and transmission facility, and, thus, city did not waive immunity from suit by entity for breach of development agreement by the fact that agency entered into agreement. Although city was a member of the agency and was named in the opening paragraph of the agreement, none of the documents were executed on behalf of any of the cities, and there was no intent that the city was a party or even a third-party beneficiary to the agreement, and, to the contrary, the agreement specified that the provisions of the agreement were for the exclusive benefit of the entity and agency.

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