

Bond Case Briefs

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PUBLIC UTILITIES - TEXAS

City of Tyler v. Liberty Utilities (Tall Timbers Sewer) Corp.

Court of Appeals of Texas, Houston (1st Dist.) - December 20, 2018 - S.W.3d - 2018 WL 6693563

Sewer utility provider which provide sewer services to an areas subsequently annexed by city sought declaratory judgment against city that water code statute which created an exception allowing city to provide sewer service within its boundaries without first obtaining from the utility commission a certificate of public convenience and necessity that included the area to be served regardless of whether the area was certified to another retail public utility was unconstitutional.

At bench trial, the District Court granted judgment finding the statute was unconstitutional. City appealed.

The Court of Appeals held that:

- Water code law was an unconstitutional local law;
- Constitutional provision relating to Legislature's control of privileges and franchises does not explicitly or impliedly authorize legislation by local or special law; and
- Constitutional provision relating to the prohibition of perpetuities and monopolies does not explicitly or impliedly authorize legislation by local or special law.

Water code law which created an exception allowing city to provide sewer service within its boundaries without first obtaining, from the utility commission, a certificate of public convenience and necessity that included the area to be served regardless of whether the area is certified to another retail public utility was an unconstitutional local law.