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SERVICE DISTRICTS - TEXAS

Walker County ESD No. 3 v. City of Huntsville

Court of Appeals of Texas, Waco - December 7, 2022 - S.W.3d - 2022 WL 17488327

City brought action against county emergency services district (ESD), along with its officers and commissioners, for committing ultra vires acts, alleging that new territory approved to be annexed by ESD included territory within the City's extraterritorial jurisdiction (ETJ), however, city never consented to its ETJ being annexed.

The District Court denied ESD's plea to the jurisdiction. ESD filed interlocutory appeal.

The Court of Appeals held that:

- City's claim was not an election contest;
- Statute stating that an ESD may sue and be sued was not waiver of governmental immunity;
- Differing procedures under statute governing expansion of ESD territory and statute governing the creation of an ESD would not lead to absurd result; and
- City did not allege ultra vires actions.

City's claim seeking a declaration that election in which voter's approved annexation of new territory by county emergency services district (ESD) was void because ESD did not have the authority to order the election without obtaining the city's consent was not an "election contest," in city's action against ESD, along with its officers and commissioners, for committing alleged ultra vires acts, where city's claim was premised on allegation that the election was void on the ground that the city did not consent to the annexation of municipal territory.

Statute stating that an emergency services district (ESD) may sue and be sued was unclear and ambiguous, and thus did not amount to waiver of governmental immunity as to county ESD, in city's action against ESD, along with its officers and commissioners, for committing alleged ultra vires acts, alleging that new territory approved to be annexed by ESD included territory within the City's extraterritorial jurisdiction (ETJ), but district was required to obtain the city's consent before territory in the city's ETJ could be annexed, which it did not.

Statute governing expansion of emergency service district's (ESD) territory does not require an ESD to make a request to, or to obtain consent from, a municipality before annexing territory in a municipality's limits or extraterritorial jurisdiction (ETJ)

Statute governing the creation of an emergency services district (ESD) is the only provision that requires an ESD to make a request to a municipality and consent by a municipality but not the only provision that gives an ESD the authority to include within its territory a municipality's limits or extraterritorial jurisdiction (ETJ).

Differing procedures under statute governing expansion of emergency service district's (ESD) territory, which did not require municipal consent to annex territory in a municipality's limits or extraterritorial jurisdiction (ETJ), and statute governing the creation of an emergency services

district (ESD), which did require municipal consent to annex territory in a municipality's limits or ETJ, would not lead to absurd result; it was presumed that municipal consent requirement was excluded for a reason, regardless of if that made the most policy sense.

City's allegations that individuals behind creation of county emergency services district (ESD) always intended to include within ESD's boundaries territory in city's extraterritorial jurisdiction (ETJ), but sought to evade statutory requirement of obtaining city's consent by waiting until ESD was created to annex territory, did not allege ultra vires actions, in action against ESD and its officers and commissioners; action could be nothing other than an expansion of ESD's territory, which did not require city's consent, there were no facts alleging that a specific officer or commissioner drafted language in petition for expansion, and it was not a violation of chapter of Health and Safety Code governing ESDs for officer or commissioner to participate in drafting or preparing a petition.

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