LEGAL UPDATES

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SCOTX: No Arbitrary Arbitration Provision for Local Governments

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The Supreme Court of Texas recently announced that local governments who have agreed to arbitration clauses may be forced into arbitration. However, the Court also announced that the judiciary "retains the duty to decide whether a local government has waived its immunity, and the extent to which any arbitration award is recoverable against a local government."

In *San Antonio River Authority v. Austin Bridge & Road, L.P. and Hayward Baker, Inc.*, the River Authority entered into a written agreement with Austin Bridge for repairs to a dam. The written agreement contained an arbitration provision requiring that disputes arising under the contract were to be decided by binding arbitration. During the course of the agreement, the cost of the repairs exceeded the initial projections. A dispute arose as to whether the River Authority was obligated to pay for the additional expenses under the contract.

A demand for arbitration of the dispute was made by Austin Bridge, pursuant to the written agreement between the parties. The River Authority cited a governmental immunity bar against the claim and moved for the arbitrator to dismiss the proceedings. After the arbitrator denied the River Authority's motion, the River Authority filed suit in state district court for an enjoinment of the arbitration and a judicial determination of whether governmental immunity barred the claims against the River Authority. Both parties moved for summary judgment, and the trial court found that the arbitration provision was enforceable. The River Authority appealed the decision. The appellate court determined that a court, and not an arbitrator, must decide the issue of immunity, and that Chapter 271 of the Local Government Code waived the Authority's immunity from lawsuits.

In a split decision, the Court generally recognized that a local governmental entity only has the powers conferred upon it by the constitution or statute,

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including the power to enter into contracts and/or waive immunity to suit. In reviewing the language of Section 271.154 of the Local Government Code, the Court highlighted that "adjudication procedures, including…an arbitration proceeding, that are stated in the contract subject to this subchapter or that are established by the local governmental entity and expressly incorporated into the contract or incorporated by reference are enforceable." The Court also held that whether the local government has waived its immunity is a question for the courts, not arbitration. The majority's holding regarding the enforceability of an arbitration provision and waiver of immunity centered on four important findings under Chapter 271 and the River Authority's statutory powers.

First, the Court noted that Section 271.151 expressly states that a "contract subject to this subchapter" includes "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity." The majority interpreted this provision as including a contract for fulfillment of governmental obligations, including "management and oversight tasks."

Second, Section 271.152 articulates that "a local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of contract." The Court interpreted this section as representing the legislature's efforts to "make local governments accountable for their obligations in goods-and-services contracts by granting a limited waiver of immunity…"

Third, the Court acknowledged that the River Authority has the statutory power to "make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges and functions conferred upon it" (citing Act of April 8, 1981, 67th Leg., R.S., ch. 60, § 3, 1981 Tex. Gen. Laws 127).

Finally, the Court held that Section 271.154 creates authorization for local governmental entities to bind themselves to arbitration provisions in valid contracts under Chapter 271. The Court reasoned that if an arbitration proceeding or provision is enforceable against a local governmental entity, then the statute must necessarily authorize a local governmental entity to bind itself to such a provision. The Court ultimately determined that because the River Authority used its statutory power to enter into a contract covered under Chapter 271, and which contained an enforceable arbitration provision, the River Authority waived its immunity to suit and could not subsequently assert that it did not have the power to bind itself to resolving a dispute under the contract through arbitration.

What this means to you

A local governmental entity that contracts with a third-party for goods or services should be mindful of whether the agreement contains an arbitration provision. Based on Chapter 271 and the Court's

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"what is enforceable is authorized" standard, a local governmental entity may be bound by the arbitration provision should a dispute or issue arise under the contract.

Contact us

If you have questions about whether a potential contract is subject to Chapter 271 or whether a possible arbitration provision is enforceable, contact Arturo Michel, Sandy Hellums-Gomez, Kate David, Robert Eckels or Anthony Franklyn.

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