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Texas Court Rules County Is Not Immune from State Fine for Violating Water Code

On July 30, 2020, the Fourteenth Court of Appeals in Houston issued an opinion in *Hyde v. Harrison County*, and held that governmental immunity will not protect Texas counties from administrative fines for violating certain Water Code provisions. *Hyde v. Harrison County*, 14-18-00628-CV, 2020 WL 4360350, at *1 (Tex. App.—Houston [14th Dist.] July 30, 2020, no pet. h.). In *Hyde*, the Texas Commission on Environmental Quality (TCEQ) instituted an enforcement action against Harrison County, Texas, for violating Texas Water Code section 26.3475(a) and title 30, section 334.50(b)(2) of the Texas Administrative Code. *Id.* at *2. The TCEQ complained the County violated these provisions by failing to conduct line-leak-detector and piping-tightness tests required annually for the underground storage tanks the County owns and operates. *Id.* at *2-3. The enforcement action sought an administrative penalty of \$5,626 against the County pursuant to Water Code section 7.051. *Id.*

The Court explained that Section 7.051 allows TCEQ to assert an administrative penalty against a “person” who violates section 26.3475(a) of the Water Code and title 30, section 334.50(b)(2) of the Texas Administrative Code, the provisions requiring compliance with standards and annual testing of the County’s underground storage tanks. *Id.* at *10; Texas Water Code § 26.3475; 30 Texas Administrative Code § 334.50. Because the Water Code does not define “person,” the Court applied Texas Government Code Section 311.00’s definition, which defines “person” as “[a] corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.” *Hyde* at *11; Tex. Government Code § 311.005.

Discussing Texas Supreme Court precedent, the Court noted, “merely including governmental entities in the statutory definition of ‘person,’ whether that definition applies under Government Code section 311.005 or in the applicable statutory scheme under which the Legislature allegedly has waived governmental or sovereign immunity, does not suffice to establish a clear and unambiguous waiver of immunity or that the context of the statute indicates no reasonable construction other than a waiver of immunity.” *Id.* at *11-12 (cleaned up). But the Court explained that when “a statute defines ‘person’ to include governmental entities, a statute imposes liability on a ‘person,’ **and construing the statute not to waive immunity would make part of the statutory scheme meaningless** . . . the supreme court has indicated a clear and unambiguous waiver of immunity would exist.” *Id.* (emphasis added).

Ultimately, the Court found that construing the statute not to waive immunity would make part of the statutory scheme meaningless because Section 7.067 of the Water Code subjects governmental entities that fall within the definition of “local government” to certain exclusive benefits and special rights to lessen their liability for administrative penalties. *Id.* at *14-17. The Court concluded, “Applying the statutory definition of ‘person’ from Government Code section 311.005 to Water Code section 7.051 shows clear legislative intent to waive governmental immunity against assessment of an administrative penalty under section 7.051 because the context of section 7.051 affords no other reasonable construction. Based on the definition of ‘person’ in section 7.051 and section 7.067’s provisions, the Legislature has clearly and unambiguously waived the County’s governmental immunity from assessment of an administrative penalty under section 7.051.” *Id.* at *21 (cleaned up).

What this means to you

The *Hyde* decision is significant because no express-waiver language existed in the statutes at issue. As the *Hyde* decision notes, if a statute lacks express language waiving immunity, Texas courts rarely determine the legislature waived governmental immunity.

Contact us

If you have questions about this update or how it might affect your business, contact Kate David, Arturo Michel, Robert Eckels, Sandy Hellums-Gomez, Logan Leal or your Husch Blackwell attorney.