



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

**October 1, 1990**

**Mr. Andrew Sansom  
Executive Director  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744**

**LO-90-66**

**Dear Mr. Sansom:**

**You ask whether a municipal utility district is eligible for a grant under Chapter 24 of the Parks and Wildlife Code in light of Attorney General Opinion JM-1173 (1990).**

**Section 24.002 of the Parks and Wildlife Code establishes the Texas local parks, recreation, and open space fund. The fund is administered by the Parks and Wildlife Department. Id. § 24.003. The department may award grants to political subdivisions to provide "one-half the costs of the planning, acquisition, or development of a park, recreation area, or open space area to be owned and operated by the political subdivision. Id. § 24.005(a). Such grants may not be used for the "operation and maintenance of parks, recreational areas, and open space areas." Id. § 24.005(c). See also Id. § 24.004 (grants may be used to cover amount political subdivision must cover in order to receive federal grant).**

**The narrow holding of Attorney General Opinion JM-1173 was that "a municipal utility district, operating under chapter 54 of the Texas Water Code may not use taxes to purchase real property for the independent purpose of having it used as a public park and developed recreation area." Id. at 7. The opinion noted, however, that the "provision of recreational facilities may be considered a proper secondary activity for a district if furnishing them promotes a constitutional purpose." Id. at 5. Also, the opinion stated that it did not consider whether a municipal utility district could "use taxes to acquire land for the limited purpose of conservation and development of the natural resources contained therein." Id. at 7. This office is currently considering a request from Senator John Whitmire in regard to whether a municipal utility district**

may "borrow money on revenue notes" for the purpose of acquiring park land. Attorney General Opinion Request No. RQ-2056.

In short, Attorney General Opinion JM-1173 acknowledged that in some fact situations it may be appropriate for a municipal utility district to provide parks. Therefore, assuming other requirements are met, some municipal utility districts may be eligible for grants. Further, the opinion did not reach the issue of whether a municipal utility district could use non-tax funds to provide parks.

Yours very truly,



Sarah Woelk, Chief  
Letter Opinion Section  
Opinion Committee

SW/lcd

Ref.: RQ-2113  
ID# 10405