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The business of relationships.

Contracting with Government Entities

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Presented:
The University of Texas School of Law
15th Annual Gas & Power Institute
September 8-9, 2016

- "Rex non potest peccare", "the king can do no wrong"
  - Herbert Broom, *A Collection of Legal Maxims, Classified and Illustrated*, 23 (London, A. Maxwell and Son 1845).

- "Rights that depend on the sufferance of the State are of uncertain tenure."
  - Suzanne LaFollette, "The Beginnings of Emancipation," *Concerning Women*, 1926

- Commercial dealings with the State can be difficult because the State makes the rules and determines how they will be enforced.
- Governmental entities are bound by different rules relating to contracts than are private entities.
- This presentation will discuss some issues a party contracting with a Texas governmental entity should be aware of prior to entering into the contract.
- Citations are available in the paper and have been included here only when helpful for emphasis or clarity.

Outline

I. Limits on a Governmental Entity's Powers to Contract
   A. Incurrence of Debt
   B. Payment Timing
II. Limits on Remedies Against Governmental Entities
   A. In General
      1. Statutes of limitation
      2. Limitations on damages
      3. Venue limitations
   B. Sovereign Immunity
III. Ethics
   A. Revolving Door
   B. Gifts

Limits on a Governmental Entity's Ability to Contract

Incurrence of Debt

- Cities may not incur debts unless at the same time arrangements are made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least 2%.
  - "Debt" is any contractual pecuniary obligation that will not be paid (i) by the revenues in the year it is incurred or (ii) out of funds then within the immediate control of the city.
  - An obligation is not a debt if it can be terminated at the end of each budget period or if it is not required to be paid from *ad valorem* taxes.
  - A contractual indemnity obligation is a debt.

5

Payment Timing – Texas Prompt Payment Act

- Texas Government Code §2251
- Binds not just the governmental entity but its vendors and their subcontractors.
- Payment by a governmental entity is due 30 days after the later of (i) the date the governmental entity received the contractual goods or services, or (ii) the date the governmental entity receives an invoice for the goods or services.
- A governmental vendor must pay its subcontractors within 10 days of receipt of payment from the governmental entity.
- A subcontractor to a governmental vendor must pay its suppliers within 10 days of receiving payment from the vendor.

6

Title search: Contracting with Government Entities

Also available as part of the eCourse
Contracting with Government Entities

First appeared as part of the conference materials for the
15th Annual Gas and Power Institute session
"Contracting with Government Entities"