

IN THE SUPREME COURT OF TEXAS

No. 08-0497

RAILROAD COMMISSION OF TEXAS AND PIONEER EXPLORATION, LTD.,
PETITIONERS,

v.

TEXAS CITIZENS FOR A SAFE FUTURE AND CLEAN WATER AND
JAMES G. POPP, RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS

Argued April 14, 2010

CHIEF JUSTICE JEFFERSON, joined by JUSTICE WILLETT and JUSTICE LEHRMANN, concurring.

I concur in the Court's judgment, but I write separately because the statute at issue in this case unambiguously precludes the Railroad Commission ("Commission") from considering traffic safety factors as part of its public interest inquiry in the permitting of oil and gas waste injection wells.

As the Court and the parties attest, ___ S.W.3d at ___, "public interest" is a broad term, the scope of which is difficult to determine with precision. But the fact that a term may admit of different meanings, and may be ambiguous as to some conceivable set of facts, does not mean that it is ambiguous as to every proposed reading. The potential breadth of a statutory term does not

prevent us from holding that a party's proposed construction is unambiguously precluded. *See* 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND ON STATUTES AND STATUTORY CONSTRUCTION § 45:1 (7th ed. 2007) (noting that the object of statutory interpretation is to determine a statute's "correct application *in a particular situation*" (emphasis added)).

The Commission relies principally on *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), in urging us to defer to its interpretation of the statute. While we frequently defer to administrative agencies' statutory interpretations, we do so principally when the relevant statute is ambiguous. *See Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747 (Tex. 2006) (noting that "the language at issue must be ambiguous" before we grant the agency's interpretation deference). Here, I believe the statute unambiguously makes clear that, in this context, "public interest" cannot include traffic safety factors.

Chapter 27 of the Water Code regulates the permitting of injection wells. The Commission is charged with permitting injection wells for the disposal of oil and gas waste, while the Texas Commission on Environmental Quality ("TCEQ") is charged with permitting injection wells for the disposal of industrial or municipal waste. TEX. WATER CODE § 27.011 (granting TCEQ the power to regulate injection wells for the disposal of industrial and municipal waste); *id.* § 27.031 (granting the Commission the power to regulate injection wells for the disposal of oil and gas waste). The Code mandates consideration by the agencies of a number of factors in deciding whether to grant a permit application. Most relevantly, both must consider whether the proposed well "is in the public interest." *Id.* § 27.051(a)(1); *id.* § 27.051(b)(1). The Commission is directed to consider a number of other factors, all of which have to do with the protection of natural resources and the regulation

of the oil and gas industry. *See id.* § 27.051(b). TCEQ is directed to consider a similar list of factors, to which is added one crucial provision: a mandate that TCEQ consider traffic safety in granting injection well permits. *Id.* § 27.051(a)(6). The significance of this provision is twofold. First, had the Legislature intended for the Commission to consider traffic safety factors in permitting wells, it would have included the same express language among the Commission’s charges as it did among TCEQ’s. Second, the portion of the statute dealing with TCEQ, unlike that dealing with the Commission, contains a partial definition of the term “public interest.” TCEQ, in considering the public interest, “shall consider, but shall not be limited to the consideration of” several factors bearing on the protection of natural resources and the environment. *Id.* § 27.051(d). The directive to consider traffic safety is not made part of that public interest inquiry. This suggests that the Legislature, even as it required TCEQ to consider traffic safety factors, did not want that inquiry to be part of a consideration of the public interest. Rather, public interest, in the context of the statute governing both TCEQ and the Commission, is limited to a consideration of factors consistent with the chapter’s purpose: “to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries, taking into consideration the economic development of the state.” *Id.* § 27.003.

We do not defer to agency interpretations of unambiguous statutes. Although I agree with the Commission that it need not consider traffic safety when permitting injection wells, I do so because chapter 27 of the Water Code so requires. The principle behind the Court’s holding would require deference to a future Commission’s decision that denied a permit based on the consideration of such traffic safety factors as the presence of trucks hauling saltwater on narrow neighborhood

roads. I believe, to the contrary, that the statute's language and context preclude such an interpretation as a matter of law. Because there is no legitimate role for deference here, and because the statute prohibits consideration of traffic safety in the Commission's decision to issue injection permits, I concur in the Court's judgment.

Wallace B. Jefferson
Chief Justice

OPINION DELIVERED: March 11, 2011