

director the specific power to enter into contracts “for the purpose of carrying out the powers, duties, and responsibilities of the [TNRCC].”¹

Ironically, JUSTICE BAKER admonishes the State to not use sovereign immunity as a “shield to avoid paying for benefits the State accepts under a contract,”² a proposition with which I assume all the Justices on this Court would agree. But the State is doing something worse – interposing sovereign immunity to close the courthouse doors so that the merits of the claim can’t even be determined. Of course, as the Court suggests, IT-Davy *could* ask the Legislature to waive immunity from suit. But surely a contracting party should not be dependent on a stable of lobbyists, assuring the support of seventy-six representatives, sixteen senators and one governor, just to open the courthouse. IT-Davy contracted with the TNRCC, which was specifically authorized by the legislature to enter into contracts. The Court should not hand to the Legislature IT-Davy’s keys to the courthouse.

Oddly, JUSTICE HECHT, rather than join JUSTICE BAKER, offers hope that there remains another key – a magic key that will loosen sovereign immunity’s lock and open the courthouse doors. But it is false hope. He is unable to identify and can give only vague clues about what that key may look like. This just encourages endless, fruitless litigation as each new contracting party, thinking it has discovered the key, seeks to open the courthouse door. As happened with the many parties in the cases cited below and to IT-Davy in this case, it will learn from this Court that, alas, it didn’t have the magic key.

¹ TEX. WATER CODE § 5.229.

² __ S.W.3d at __.

As the list of those shut out of the courthouse continues to grow, the Court will, perhaps, begin to appreciate the plight it forces on parties contracting with the State. Today, we add IT-Davy to that list.³ For the reasons expressed in my dissent in *General Services Commission v. Little-Tex Insulation Company*⁴ and *Federal Sign v. Texas Southern University*,⁵ I again respectfully dissent.

Opinion delivered: April 11, 2002

Craig T. Enoch
Justice

³ See *Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 600 (Tex. 2001); *Texas Dep't of Transp. v. Are-Aerotron, Inc.*, 39 S.W.3d 220 (Tex. 2001); *Federal Sign v. Texas S. Univ.*, 951 S.W.2d 401, 408 (Tex. 1997); *Tex. Dep't of Pub. Safety v. Int'l Capital Corp.*, 40 S.W.3d 687 (Tex. App.-Austin 2001, no pet.); *Denver City Ind. Sch. Dist. v. Moses*, 51 S.W.3d 386 (Tex. App.-Amarillo 2001, no pet.); *Gendreau v. Medical Arts Hosp.*, 54 S.W.3d 877 (Tex. App.-Eastland 2001, pet. filed); *City of Houston v. Northwood Mun. Util. Dist. No. 1*, _ S.W.3d _ (Tex. App.-Houston [1st Dist.] 2001, no pet.); *Tex. Dept. of Pub. Safety v. Rivera*, No. 13-01-00446-CV, 2001 Tex. App. LEXIS 7681 (Corpus Christi Nov. 15, 2001, no pet.) (not designated for publication); *Landry's Crab Shack v. Bd. of Regents*, No. 03-00-00690-CV, 2001 Tex. App. LEXIS 6948 (Austin Oct. 18, 2001, no pet.) (not designated for publication); *Ondemir v. Bexar County Clerk*, No. 04-00-00497-CV, 2001 Tex. App. LEXIS 6488 (San Antonio Sept. 26, 2001, pet. denied) (not designated for publication); *O'Dell v. Perry*, No. 03-00-00603-CV, 2001 Tex. App. LEXIS 4367 (Austin June 29, 2001, no pet.) (not designated for publication); *State DOT v. Ramirez*, No. 03-00-00594-CV, 2001 Tex. App. LEXIS 2192 (Austin Apr. 5, 2001, pet. filed) (not designated for publication); *Texas A&M Univ. Sys. v. AFEX Corp.*, No. 03-00-00222-CV, 2001 Tex. App. LEXIS 1266 (Austin Mar. 1, 2001, no pet.) (not designated for publication).

⁴ 39 S.W.3d at 602.

⁵ 951 S.W.2d at 416.