



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Tom C. King  
State Auditor  
Austin, Texas

Dear Sir:

Opinion No. O-1820  
Re: Construction of S. B. No. 3,  
First Called Session 44th  
Legislature, Chap. 368, p  
1527, known as "Brazos River  
Flood Control and Reclamation  
District," with reference to  
disbursements and expenditure  
of its funds, and as to what  
constitutes Federal coopera-  
tion with said Act.

We are in receipt of your letter of January 4,  
1940, in which you make the following request of this de-  
partment:

"1. In view of the statement of facts in  
the letter of Mr. Collins, attached hereto, does  
the expenditure of Federal funds by the Works  
Progress Administration, a division of the Feder-  
al government, constitute a compliance with Sec-  
tion 1 of Senate Bill No. 3, 1st Called Session,  
44th Legislature, an extract of which reads, 'Con-  
tingent upon a loan, and/or grant, and/or allot-  
ment from the United States of America --' and do  
the facts as stated constitute a departure from  
any other legal requirement of the State laws?  
(This question does not appear to be covered in  
91 2nd Southwestern 665).

"2. In view of Section 2 of Senate Bill No.  
3, designating this authority a State Agency, are  
such funds as come into its possession through  
tax remissions, or from the sale of securities,  
State Funds, and should they be placed on deposit

in the State Treasury subject to State approval of disbursements, or is their administration and expenditure entirely discretionary in the Appointed Administering Board?"

A letter from Mr. Collins, Treasurer-Comptroller of this reclamation district, which you attach to your inquiry, contains the following paragraph:

"Accordingly, in direct reply to your inquiry, there have been no Federal Funds actually turned over to the District for administration by us.

"The Federal Government has, however, made available to us, through the Works Progress Administration, a grant of \$4,500,000.00 for the construction of Possum Kingdom Dam and Power House. As explained in my letter of the 5th these funds were not turned over to the District, but were earmarked and retained in the U. S. Treasury for disbursement by the W.P.A. against certain construction and material contracts, all of which had the prior approval and acceptance of the W. P. A.

"The various contractors present their estimates or invoices to the Director of Finance, W. P. A. at Washington, D. C. after officials of the District have certified on such statements that the work has been performed, or the material received. After such statements have been checked by the General Accounting Department at Washington and found to be correct and in conformity with the approved contracts, they are then passed to the Treasurer of the United States who remits direct to the Payee by U. S. Treasury check."

In answer to your first question as to what constitutes a compliance by the Federal Government with the provisions of the Reclamation Act with reference to contributions of Federal funds, you are advised that the Act itself answers the question. Section 7 of the Act provides:

\*SEC. 7. None of the money hereby donated and/or granted to the Brazos River Conservation

and Reclamation District shall be made available to the District as herein provided for unless and until the District shall have first received from the United States of America, or others a grant and/or loan and/or allotment of sufficient size to reasonably insure the completion of any unit or units of such coordination and completed system of improvements and control of the Brazos River and its tributaries and water thereof as may be approved by the Board of Water Engineers of the State of Texas, such approval to be certified to the Comptroller of the State by the Board of Water Engineers; provided, however, that an allotment from the United States of America and/or others for such grant and/or loan and/or allotment shall be construed as the receiving thereof. \* \* \*

This Act further provides:

"If the grant and/or loan and/or allotment herein referred to shall be received by the District from any department of government set up as an agency by the United States of America, it shall be construed as having been received from the United States of America within the meaning of this Act."

Giving effect to the language used in the first quotation from this Act, it must be held that the district has received a loan or grant from the Federal Government when the allotment for such purpose has been made.

The second quotation from Sec. 7 of the statute is sufficient, in our opinion, to make the grant of \$4,500,000.00 available to the district through the Works Progress Administration mentioned in the quoted paragraph of Mr. Collins' letter a sufficient compliance on the part of the Federal Government with this statute.

In answer to your second question you are advised that the funds made available to this reclamation district by the State are not to be paid into the State treasury and disbursed therefrom. In no uncertain terms this statute makes it the duty of the respective collectors of taxes in the counties of this district to pay the money when collected over to the treasurer of the district. Provision is made for the expenditure of this money by the district, and likewise provision is made for reports of its expenditures of

these funds to the Comptroller, as well as an audit by your department of said report, and a return of the report when so audited to the Treasurer of the reclamation district. These provisions and many others in this Act all show beyond any doubt that the Legislature intended that such funds should be deposited with the treasurer of the district rather than the State Treasurer and be disbursed therefrom.

We have no hesitancy in resting our opinion entirely upon the provisions of this Act since our Supreme Court has reviewed the Act and has sustained its constitutionality, as well as all other attacks which have been made to date on the Act. We refer to the case of Brazos River Conservation and Reclamation District v. McCraw, 91 S. W. (2) 665.

Trusting that the foregoing will give you the information desired, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY *Grover Sellars*  
Grover Sellars  
Assistant

GS-MR

*H. F. Moore*

