



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable W. E. Saenger, Secretary  
Upper Guadalupe River Authority  
Kerrville, Texas

Dear Sir:

Opinion No. O-4293

Re: Authority of the Upper  
Guadalupe River Authority  
to use appropriations pro-  
vided by House Bill 83,  
47th Legislature, to clean  
underbrush from river bottom

We acknowledge again your letter dated March 23, 1942,  
requesting an opinion on the following question:

Does the Upper Guadalupe River Authority have  
the authority to use funds appropriated by the  
State to be used in the development of dams, etc.,  
for flood control for the purpose of cleaning out  
the underbrush in the river bottom?

In absence of a response to our letter dated March  
25, 1942, requesting further information relative to the speci-  
fic appropriation referred to in your question, we assume your  
request concerns that appropriation provided the said Author-  
ity and District in Acts 1941, 47th Legislature, House Bill 83,  
Chapter 144, Section 8a, page 201.

House Bill No. 83, Section 8a, of the 47th Legislature,  
reads as follows:

"There is hereby appropriated for the use of  
the Upper Guadalupe River Authority and Reclamation  
District . . . created by virtue of an Act of the  
46th Legislature, out of the funds in the State  
Treasury . . . the sum of Three Thousand Six Hun-  
dred Dollars (\$3,600), which may be withdrawn from  
time to time on warrant signed by the Chairman of  
the Board of Directors and the Treasurer of the  
said . . . District; . . ."

Under the terms of the above quoted statute appropriating \$3,600 "for the use of the Upper Guadalupe River Authority and Reclamation District," we find no words of limitation nor a setting out of specified purposes for which said moneys must be used by said District. It is therefore proper that this appropriation should be used to effectuate any one or more of the several purposes for which said District was created. Thus, we are referred to Acts 1939, 46th Legislature, Senate Bill No. 303, Chapter 5, page 1062, the Act which created the said Authority and District and which enumerates its several purposes, functions and powers.

Senate Bill No. 303, Section 2, of the 46th Legislature, reads in part as follows:

" . . . the District shall have and is authorized to exercise the following powers, rights, privileges and functions:

"(a) to control, store and preserve within the boundaries of the District, the waters of the Guadalupe River and its tributaries for any useful purpose or purposes. . . ;

"(b) to prevent or aid in the prevention of damage to person or property from the waters of the Guadalupe River and its tributaries;

" . . . .

"(e) to do any and all other acts or things necessary or convenient to the exercise of the powers, rights, privileges or functions conferred on it. . . ."

The fact situation confronting the Authority and District in regard to the underbrush growth in the river is presented in your letter as follows:

"In 1932 we had a flood which did considerable damage due to the fact that the river bottoms were grown up with trees and brush, and retarded the flow of the water. Again in 1935 we had another flood, but as the 1932 flood had washed out all of this brush, it did very little damage, the water was able to move down stream faster.

Honorable W. E. Saenger, page 3

"Since this time the river bottoms have begun to grow up again, and I am anxious to know if any of these funds can be used for cleaning out same."

In order to effectuate the functions and purposes of the said Authority and District as specified in Senate Bill 303, above quoted, it is our conclusion that the Upper Guadalupe River Authority would have the power to require that the underbrush of the river bottoms be cleaned out to aid in keeping the waters thereof within its banks and to prevent damage by flood; that the moneys appropriated to it for flood control measures might well be expended for this particular purpose.

It is our opinion, therefore, that the appropriation provided the Upper Guadalupe River Authority under House Bill 83, Section 8 of the 47th Legislature, may be used for the purpose of cleaning out underbrush from the river bottom, such purpose being incidental to its power to control floods.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (s) Glenn R. Lewis  
Assistant

By (s) Chester Ollison

CO:db

APPROVED MAY 15, 1942  
(s) Gerald C. Mann  
Attorney General of Texas

APPROVED  
Opinion Committee  
By B.W.B. Chairman