OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Shelby K. Long
County Attorney
Jefferson County
Beaumont, Texas

Dear Sir:

Opinion No. O-5920
Re: Is the Lower Neches Valley Authority exempt from the payment of taxes for local maintenance of Rosedale Independent School District?

We thank you for your brief submitted in your letter of March 7 in which you propound the following questions:

"1. Is the Lower Neches Valley Authority exempt from payment of taxes for Local Maintenance of Schools of Rosedale Independent School District?

"2. Is the Lower Neches Valley Authority exempt from payment of taxes for Interest and Sinking Fund on outstanding bonded indebtedness of Rosedale Independent School District at the time of the creation of the LNVA?

"3. May the voters of Rosedale Independent School District authorize a tax rate for Local Maintenance and Interest and Sinking Fund in excess of $1.00 per hundred valuation?"

Art. VIII, Sec. 2, Constitution of Texas, provides that "the Legislature may, by general laws, exempt from taxation public property used for public purposes."

Art. 7150, V.A.C.S., provides as follows:

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CATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OF TEXAS

"The following property shall be exempt from taxation, to wit:

"4a. Districts and Authorities, property of; payments in lieu of taxes.--All property real or personal belonging exclusively to Districts and Authorities created directly by Acts of the Legislature pursuant to Article XVI, Section 59, of the Constitution as agencies of the State of Texas, and all property real or personal belonging exclusively to Districts and Authorities created or incorporated under laws enacted pursuant to Section 59, Article XVI of the Constitution; provided that if any such District or Authority has heretofore acquired or does hereafter acquire property which at the time of such acquisition is or was then subject to taxation, and is at the time of its acquisition being used for generating, transmitting, and distributing electric energy or power, such District or Authority shall at the times prescribed by law for the payment of ad valorem taxes make a payment in lieu of taxes to the State of Texas and to the county, city, and such taxing districts within which such property is situated; such payment in lieu of taxes to be in the amount which would be realized by levying an ad valorem tax at the current rate for the then current tax year based on the assessed value of such property for the last current tax year before being acquired by such District or Authority; provided further that no payment shall be made with respect to any property no longer owned by such District or Authority for generating, transmitting, or distributing electric energy or power. Such payment in lieu of taxes shall be made out of the revenues received by such District or Authority from the generation, transmission, or distribution of electric power and energy and the liability for same shall constitute a lien or encumbrance only on the Revenues of such District or Authority, and shall be considered as a part of the operating expenses. Specifically, no payments shall be made in lieu of taxes with respect to dams, dam sites, reservoir areas, and water distributing or irrigation systems. It is the expressed legislative intent of this Act that such Districts or Authorities make payments in

> lieu of taxes only with respect to properties which at the time of their acquisition were on the ad valorem tax rolls of the State of Texas or of any county, city, or any other taxing District of the State of Texas and which at the time of the acquisition were being used for generating, transmitting, or distributing electric power and energy; provided further that it is the expressed legislative intent that no payments shall be made in lieu of taxes with respect to dams, dam sites, reservoir areas, and water distributing or irrigation systems, belonging to any such Authority or District."

The Lower Neches Valley Authority is a governmental agency, body politic and corporate created under Art. XVI, Sec. 59, Constitution of Texas, and the Enabling Act of the Legislature pursuant thereto, appearing as Acts 1933, 43rd Leg., 1st C.S., p. 169, Ch. 63, as amended by Acts 1934, 43rd Leg., 4th C.S., Ch. 17, and Acts 1941, 47th Leg., R.S., Ch. 570. This amendment, known as the "Conservation Amendment" provides for the creation of conservation and reclamation districts as follows:

> "Sec. 59a. The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its aris, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto:
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> "(b) There may be created within the State of Texas, or the State may be divided into, such number

of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which district shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law." (Emphasis added.)

The above cited act creating the Lower Neches Valley Authority declares in Section 1 thereof the nature and purposes of the authority to be as follows:

"Sec. 1. There shall be and is hereby created a conservation and reclamation district by the name of 'Lower Neches Valley Authority', which district is created as a governmental agency, body politic and corporate, vested with all the authority as such under the Constitution and Laws of this State; and which shall have and be recognized to exercise all of the powers of such governmental agency and body politic and corporate as are expressly authorized in the provisions of the Constitution, Section 59 of Article 16, for districts created to conserve, store, control, preserve, utilize and distribute the storm and flood waters and the waters of the rivers and streams of the State, and such powers as may be contemplated and implied by the purposes of this provision of the Constitution, and as may be conferred by General Law, as well as by the provisions of this Act, except nothing herein contained shall authorize said district to levy any taxes or special assessments, or to create any debt payable out of taxation; and said district shall have and be recognized to exercise all the rights and powers of an independent governmental agency, body politic and corporate, to construct, maintain and operate, in the valleys of the Neches River and its tributaries, within or without the boundaries of

> such district, any and all works deemed essential to the operation of the district and for its administration in the control, storing, preservation and distribution to all useful purposes of the waters of the Neches River and its tributary streams, including the storm and flood waters thereof; and such district shall have and be recognized to exercise such authority and power of control and regulation over such waters of the Neches River and its tributaries as may be exercised by the State of Texas, subject to the provisions of the Constitution and the Acts of the Legislature."

In the light of the foregoing constitutional and statutory provisions the conclusion is inescapable that the Lower Neches Valley Authority is an Authority created directly by act of the Legislature pursuant to Article XVI, Section 59, of the Constitution as an agency of the State of Texas within the tax exemption granted in Art. 7150, Subdiv. 4a, V.A.C.S., and consequently exempt from taxation for local maintenance and for interest and sinking fund on outstanding bonded indebtedness of Rosedale Independent School District. Since you state that none of the property of the Authority was at the time of its acquisition being used for generating, transmitting, and distributing electric energy or power, the Authority is not obligated by Subdiv. 4a, Art. 7150, V.A.C.S., to make payments in lieu of taxes to the school district, but is specifically exempt therefrom by the following language: "It is the expressed legislative intent that no payments shall be made in lieu of taxes with respect to dams, dam sites, reservoir areas, and water distributing or irrigation systems, belonging to any such authority or District." Your questions one and two are therefore answered in the affirmative.

We are enclosing a copy of Opinion No. O-5433 which disposes of your third question.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By Fagan Dickson
Fagan Dickson
Assistant

By Virginia Noel
Virginia Noel

COMMITTEE
BY BWB
CHAIRMAN

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