OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Charles A. Theobald
County Attorney
Galveston County
Galveston, Texas

O-6353

Dear Mr. Theobald:

Opinion No. O-6353

Re: Construction of Section 91, Article 8263e, Vernon's Annotated Civil Statutes, regarding the organization of navigation districts.

You state the following facts as a basis for your request for the opinion of this department:

"On December 15th, 1944, the Commissioners' Court of this County convened for the purpose of hearing the proponents of a petition signed by Ralph Cohen and 112 others, as well as the opponents of said petition, praying that a Navigation District be established to be known as Galveston County Navigation District No. 1. A certified copy of said petition, the Notice of Hearing, and the Order of the Commissioners' Court setting a day for the hearing of the Petition being attached hereto and made a part hereof.

"During the proceedings on the hearing of the petition which was apparently brought and prosecuted under Article 8263e, Vernon's Annotated Civil Statutes, many questions of law and arguments arose as to the proper construction and interpretation of the various sections of said article, and the Commissioners Court of this County instructed me to seek from your department your construction of the sections of said article hereinafter named and commented upon, and also requested that I secure from your department a conference opinion construing said sections.

"* * *.

OPINION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

"At the close of the hearing on the petition the opponents filed a written motion praying that the petition be dismissed for several reasons the most important of which is that the petition is fatally and legally insufficient in that it does not state, as required by Section 91 of Article 8263-E, that it is the intention of the Petitioners to organize such District under and by virtue of said Article 8263E nor does it state that the Petitioners desire to organize such District under the provisions of Chapter 5 of the Acts of the 39th Legislature and Acts amendatory thereof (Article 8263-H and Statutes amendatory thereof. A copy of said motion to dismiss being attached hereto and made a part hereof."

Upon these facts you propound several questions, the first of which is as follows:

"A careful reading of the petition filed to form this Navigation District leads me to believe that the petition for the formation of this Navigation District does not state as provided by Section 91 of Article 8263e whether the same is being prayed for under and by virtue of Section 91 of Article 8263e, or under and by virtue of Article 8263h.

"I would thank you to check this petition carefully, and if you are of the same opinion as I am as stated above, then is it the opinion of your department that this petition is fatally defective, and would the Commissioners' Court in that event have jurisdiction to entertain the petition?"

We have carefully read the petition and are of the opinion you have correctly interpreted it; that is, it does not state whether the same is being presented under Article 8263e or Article 8263h.

Section 91 of Article 8263e is as follows:

"This Act is declared to be cumulative of all other Acts now in force as to Navigation Districts hereinafter to be organized; and in order to come within the purview of this Act, the petition for the organization of such districts hereafter to be

organized, shall state that it is the intention of the petitioners to organize same under and by virtue of this Act. In the event it is desired to organize under the provisions of Chapter 5 of the Acts of the 39th Legislature and Acts amendatory thereof, then such petition shall so state, and provisions of this Act shall not apply to such district."

It is the opinion of this department the petition is fatally defective, in that it does not comply with the mandatory requirements of Section 91 in the particular mentioned, without which the Commissioners' Court is without authority to entertain and act upon it.

It is always the petition that invokes the jurisdiction of the court to act in such a matter, and without such petition as complies, at least substantially, with Section 91, there is nothing before the court authorizing it to act. The petition, therefore, should have been dismissed upon the defect being called to the court's attention.

Our answer to this question makes it unnecessary for us to answer your other questions. They are immaterial.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By Ocie Speer
Ocie Speer
Assistant

OS-MR

APPROVED [illegible] 1945

APPROVED
OPINION
COMMITT.
BY Blair
CHAIRMAN