



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable George W. Cox, M. D.  
State Health Officer  
Texas State Board of Health  
Austin, Texas

Dear Dr. Cox:

Opinion No. 0-6980

Re: Can a drainage district expend  
money on mosquito control, and  
related matters

We quote from your letter of December 7, 1945, as  
follows:

"This Department has been carrying on quite an extensive malaria control in war areas program with Federal funds under the Malaria Control in War Areas setup. Much of this malaria control work consists of draining and filling low areas. The various Drainage Districts over the State have been of particular help in this connection.

"Especially has the Brazoria County Drainage District No. 5 participated in the work to the extent of extending their drainage ditches within the district area. The adjoining areas have seen the benefits of this work and are anxious to cooperate further with this District by increasing the present boundary lines of District #5. The Brazosport Chamber of Commerce has assumed leadership in bringing about better health conditions in the entire Area. In order that this Department may secure the greatest benefit by way of local contribution from the Drainage Districts, we would appreciate your advising us on the following:

"1. Procedure to follow in enlarging drainage District No. 5 by taking in contiguous areas.

"2. Does the present drainage law give the drainage district authority to spend money on mosquito

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control, including such items as draining of stagnant waters, filling of stagnant ponds, and application of larvicides or insecticides.

"3. Can drainage funds be used for the payment of personnel to apply such larvicides or insecticides, and in the purchase of such equipment as is necessary for mosquito control work.

"4. If the drainage district does not have the authority to spend a portion of their funds for insecticides and the payment of personnel to apply the insecticides and the purchase of equipment necessary for their application, would you give us the legal procedure necessary to include these powers in the drainage district."

We find no statute empowering a drainage district to enlarge its boundaries, and in the absence of such legislative authorization, it is the opinion of this department that a drainage district cannot be enlarged.

The following underlined portions of statutes bear upon your second and third questions:

Article 8098, Vernon's Annotated Civil Statutes, 1925 -

"A petition shall first be presented to the Court signed by twenty-five of the freehold resident taxpayers in the proposed district, or if there are less than seventy-five such citizens then by one-third thereof, whose lands may be affected thereby, praying for the establishment of a drainage district, and setting forth the necessity, public utility and feasibility and proposed boundaries thereof, and designating a name for such district, which shall include the name of the county."

Article 8101 -

"On the day set for the hearing, any person whose land would be affected by the creation of said district may appear before said Court and contest the creation of such district or contend for its creation, and may offer testimony to show that the district

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is or is not necessary, and would or would not be of public utility, either sanitary, agricultural or otherwise, and that the creation of such district would or would not be feasible or practicable."

Article 8138 -

"At the same time that taxes are levied to meet the bonded indebtedness, the Court shall cause to be assessed and collected taxes upon all property in the district, whether real, personal or otherwise, sufficient to maintain, keep in repair, and to preserve the improvements in the district, and to pay all legal, just and lawful debts, demands and obligations against such district. Such levy shall never, in any one year, exceed one-half of one per cent of the total assessed valuation of such district for such year. Such taxes when so collected shall be placed in the construction and maintenance fund."

Your second and third questions turn on the pivotal question of whether or not the spreading of larvicides and insecticides for mosquito control comes within the purposes for which drainage districts are formed.

In determining what are the purposes for which a drainage district is formed, we look to the expression of the Legislature as found in the foregoing statutes. Article 8101 specifically mentions sanitation as one of the conditions that influence the creation of a drainage district. Webster's definition of "sanitary" is as follows:

"Sanitary -- of or pertaining to health; for or relating to the preservation or restoration of health; occupied with measures or equipment for improving conditions that influence health; free from or effective in preventing or checking agencies injurious to health."

Under the heading of "Purposes" of drainage districts we find in 15 Texas Jurisprudence, page 722, the following statement:

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"Drainage districts are authorized and encouraged in the interest of good husbandry, of the public health, of the advancement of the general upbuilding of the country, and the rescuing of waste portions of lands and their being made to serve useful and profitable purposes."  
Jefferson County Drainage District v. McFaddin,  
(Civil Appeals) 291 S.W. 322, affirmed (Com. App.)  
4 S. W. (2) 33.

Justice Reese of the Galveston Court of Civil Appeals in the case of Wharton County Drainage District vs. Higbee, 149 S. W. 381, (Writ of Error refused by the Supreme Court) said:

"It will be observed that something else enters into the question of the creation of such districts than the benefit to or enhancement of the value of the lands in the district. The court must find that the drainage will 'be conducive to the public health or be a public benefit or utility', as a prerequisite to the creation of the district.

\* \* \*

"Questions of public health and general public benefit and utility are to be consulted in the creation of a drainage district, and unquestionably these are matters of great importance."

It is a matter of common knowledge that drainage programs require many years of development, and that one of the main purposes of a drainage district is to completely drain the district area of all standing water thereby improving the land and eliminating hazards to the public health. Pending the fulfillment of these objectives, the district necessarily has to resort to temporary measures to alleviate unwholesome conditions in the undeveloped areas. These temporary measures address themselves to the sound discretion of the drainage commissioners in the district. If, in their discretion, the commissioners believe that the draining of stagnant waters, the filling of stagnant ponds, and the spreading of larvicides and insecticides should be

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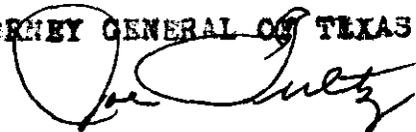
performed as incidental to the final completion of the drainage program and in aid thereof, then we conclude that an expenditure for such purposes, including the necessary expenses of personnel and equipment, would be lawful.

In view of the foregoing statutes and authorities, it is the opinion of this department that your second and third questions should be answered in the affirmative. The disposition of these questions renders unnecessary an answer to your last question.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By



Joe Fultz

JF:BT

*APPROVED*  
*Arthur B. Bentley*  
3/21/36  
FIRST ASSISTANT  
ATTORNEY GENERAL

APPROVED  
OPINION  
COMMITTEE  
BY *of*  
CHAIRMAN