



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

August 13, 1947

Hon. Ney Sheridan, Jr.,
County Attorney,
Nolan County,
Sweetwater, Texas

Opinion No. V-338

Re: Authority to levy
a tax for Trent Road
District No. 1 under
S. B. 375, 50th Legis-
lature, 1947.

Dear Mr. Sheridan:

Your recent request for an opinion of this office relative to Senate Bill No. 375, Acts of the 50th Legislature, 1947, reads in part as follows:

"An opinion is requested as to whether or not a tax may be levied by said Road District without first having a bond issue election as provided in Article III, Section 52, of the Constitution of the State of Texas.

"... an opinion is requested as to whether or not Art. VIII, Sec. 9 of the Constitution limits the amount that may be levied to 15¢ without first having an election for an additional 15¢ as provided in said portion of the constitution.

"It is also my opinion under the interpretation of Art. III, Sec. 52 and Art. VIII, Sec. 9 of the Constitution and the holding of the Court in Commissioners' Court of Navarro County v. Pinkston that the subject S. B. 375 is unconstitutional on the ground that it provides for a method of taxation and financing of the road district contrary to the two cited sections of the constitution and contains no saving clause that would permit the ignoring of Sec. 4 of said S. B. 375."

Senate Bill No. 375, Acts of the 50th Legislature, 1947, reads in part as follows:

"Section 1. There is hereby created and established, and made a political subdivision

of this state under and by virtue of Article III, Section 52 of the Constitution of the State of Texas, a defined road district to be known and designated as the 'Trent Road District No. 1 in Taylor, Jones, Fisher and Nolan Counties,' composed of adjacent and contiguous parts of Taylor, Jones, Fisher and Nolan counties, within the State of Texas

"Sec. 2. The Commissioners Courts of the four counties of which this District is a part shall constitute a Board of Directors for managing the affairs of said Road District. . .

"Sec. 3. It shall be the duty of said Board. . . to levy taxes for said purposes within the limits of the constitution and laws of this state and of this Act.

"Sec. 4. Taxes within the limitations provided by the constitution may be levied, assessed and collected for the said road purposes, provided that the taxes for such road purposes shall be uniform throughout said District, and shall be levied in the following manner:

"The said Commissioners Courts of said four counties acting as the Board of Directors of said Road District shall fix the said rate of taxation which said rate shall be applied uniformly to the portions of said District lying in said respective counties, and said rate shall never exceed in any of said counties the maximum rate allowed by the constitution and laws of this state. The Commissioners Courts of the said respective counties shall thereafter, levy said tax at the rate so fixed upon all property situated within said county and within that portion of said Road District lying within such county."

The Bill contemplates that the Board of Directors of the Road District shall fix the rate of taxation and each Commissioners' Court of the four counties within the Road District shall levy the tax without an election upon all property within their respective counties, regardless of whether such property is located within the

Road District or not.

Article III, Section 52, Constitution of the State of Texas, reads in part as follows:

" . . . provided, however, that under legislative provision any county, any political subdivision of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include, towns, villages or municipal corporations, upon a vote of a two thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize . . . "

Article VIII, Section 9, Constitution of the State of Texas, provides in part:

" . . . and no county . . . shall levy more than twenty-five (25) cents for . . . county purposes, and not exceeding fifteen cents for roads and bridges . . . on the one hundred dollars valuation."

As the Bill does not authorize an election for the issuance of bonds, the counties cannot levy the tax provided for in Article III, Section 52 of the Constitution. Nor is it believed that the counties can levy the 15¢ on the \$100 valuation provided for in Article VIII, Section 9 of the Constitution, on all property within the county to be used for the benefit of only a part of said county and parts of three other counties. The Constitution authorizes counties to levy this 15¢ assessment on

the \$100 valuation for roads and bridges and it is our interpretation that this means for roads and bridges within the entire county and is not an authorization for the county to make such assessment and then allow the same to be collected and used by a Road District composed of parts of four counties. Nor can the Legislature validly give such authority to a county. In *Carroll v. Williams*, 109 Tex. 155, 202 S.W. 504, Judge Hawkins, speaking for the Supreme Court of this State, said:

"By necessary implication said provisions of section 9, article 8, were designed, not merely to limit the tax rate for certain therein designated purposes, but to require that any and all money raised by taxation for any such purpose shall be applied, faithfully, to that particular purpose, as needed therefor, and not to any other purpose or use whatsoever."

Section 4 of the Bill authorizes only those taxes to be levied, assessed and collected as are within the limitations provided by the Constitution. As there are no taxes which can be constitutionally levied in the manner set out in the Bill within the limitations provided by the Constitution, no taxes may be levied, assessed or collected. It is therefore the opinion of this Department that the manner of taxation set out in Section 4 of said Bill is void.

In answer to your request for an opinion as to whether or not Article VIII, Section 9 of the Constitution limits the amount that may be assessed upon the \$100 valuation for road and bridge purposes without first having an election, you are advised that an assessment of taxes by a county for road and bridge purposes greater than 15¢ on the \$100 valuation without an election as provided for therein is not authorized by said Section and Article of the Constitution and would therefore be void.

It has come to our attention that the argument has been advanced that since S. B. 375 was prepared by this office, the same is constitutional. Our office put this legislative proposal in legal form just as it did hundreds of bills during the 50th Legislature. This was done with the specific understanding that this office did not thereby pass upon or approve the merits or constitutionality of such measures. In this case, as in all others

requiring the writing of bills, the requesting legislator signified his understanding of the following rule at the time of making the request:

"It is understood that preparation of this proposed draft is no indication whatever that its substance, policy or constitutionality is approved or passed on by the Attorney General's office."

SUMMARY

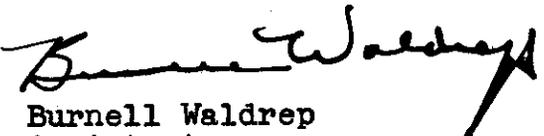
1. S. B. No. 375, Acts of the 50th Leg., 1947, purporting to establish "Trent Road District No. 1 in Taylor, Jones, Fisher and Nolan Counties" does not provide a valid method to levy taxes to support such district under Article III, Sec. 52, of the Constitution of the State of Texas.

2. Under Article VIII, Sec. 9, Constitution of the State of Texas, a county cannot legally assess a tax greater than 15¢ on the \$100.00 valuation for road and bridge purposes without first having an election as provided for therein.

Yours very truly

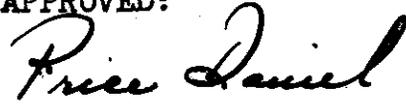
ATTORNEY GENERAL OF TEXAS

By


Burnell Waldrep
Assistant

BW:wb;jt;djm

APPROVED:


ATTORNEY GENERAL