



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

August 24, 1948

Hon. La Vern I. McCann  
County Attorney  
Heckley County  
Levelland, Texas

Opinion No. V-669

Re: Number of parks that may  
be established in a county  
and tax available for the  
acquisition, improvement  
and maintenance thereof.

Dear Sir:

We refer to your letter in which you submit the following:

"Heckley County does not have a system of parks at the present time. However there is considerable interest among the people of the county for a number of parks. As soon as a petition is presented, the Commissioners' Court plans to call an election for the purpose of determining whether or not the Court shall be authorized to levy and collect a tax of not to exceed Five Cents on each One Hundred Dollars assessed valuation for the purchase and improvement of lands for use as county parks as well as whether or not the Court shall be authorized to issue bonds to purchase and improve lands for park purposes.

"There are some of the citizens of the county that would like to have as many as seven or eight parks in our county. However, there are some who contend that law will not permit any one county to have that many parks.

"It is my opinion that after the proper election procedure that the Commissioners' Court would be authorized to levy and collect a tax not to exceed five cents on each one hundred dollars assessed valuation for the purchase and improvement of lands for county parks and that bonds may be issued and a tax not exceeding 10 cents may be levied under Sec. 2, Art. 6081E, RCS. However, there are some who

disagree with me and contend that the two statutes conflict and are meaningless."

Article 6078, Vernon's Civil Statutes, provides a method by which the Commissioners' Court may purchase and improve parks and pay for such purchase and improvement with money derived from a tax levy of not exceeding five cents on each one hundred dollars assessed valuation of property, after authorization to do so by two-thirds vote of the property taxpaying voters at an election held for such purpose. Such Court is further authorized to levy an annual tax to maintain such parks and pay for improvements therein specified. That article reads:

"Each Commissioners Court is authorized to levy and collect a tax not to exceed five (5) cents on each one hundred dollars assessed valuation of the county for the purchase and improvement of lands for use as county parks. No such tax shall be levied and collected until the proposition is submitted to and ratified by the property taxpaying voters of the county at a general or special election called for that purpose, provided, a two-thirds majority of the property taxpaying voters of such county, at an election held for such purpose shall determine in favor of said tax. If said court desires to establish two or more of such county parks, they shall locate them in widely separated portions of the county. Said court shall have full power and control over any and all such parks and may levy and collect an annual tax sufficient in their judgment to properly maintain such parks and build and construct pavilions and such other buildings as they may deem necessary, lay out and open driveways and walks, pave the same or any part thereof, set out trees and shrubbery, construct ditches or lakes, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules and regulations as said court may prescribe."

Article 6081e, Vernon's Civil Statutes, provides a method by which a county or an incorporated city, independently or jointly with each other, may acquire and improve public parks and playgrounds and pay for the same

with proceeds of bonds issued for such purpose, the pertinent parts of which read:

"Sec. 1. That any county or any incorporated city of this State, either independently or in cooperation with each other, or with the Texas State Parks Board, may acquire by gift or purchase or by condemnation proceedings, lands to be used for public parks and playgrounds, such lands to be situated in any locality in this State and in any sized tracts deemed suitable by the governing body of the city or county acquiring same;

. . .

"Section 2. To purchase and/or improve lands for park purposes, an incorporated city and/or county may issue bonds, and may levy a tax not exceeding Ten (10¢) Cents on the One Hundred (\$100.00) Dollars valuation of taxable property in such city and/or county to pay the interest and provide a sinking fund to retire such bonds, the issuance of such bonds, and the collection of taxes in payment thereof to be in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of 1925, governing the issuance of bonds by cities, towns and/or counties in this State; this Section shall be construed to authorize the levying of said tax not exceeding Ten (10¢) Cents on the One Hundred (\$100.00) Dollars of valuation notwithstanding the provisions of Article 6080 of the Revised Civil Statutes of 1925. As amended Acts 1941, 47th Leg., p. 645, ch. 389, § 1."

It is made plain in the above quoted laws that the purpose of the five cent tax levy under Article 6078 is the "purchase and improvement of lands for use as county parks." We are of the opinion that, when authorized by a two-thirds vote of the property taxpaying voters as provided in Article 6078, the Commissioners' Court may annually levy the five cents on each one hundred dollars of taxable property in the county for such purposes. After the purchase of such parks, said Court may annually levy such tax as such Court may deem necessary to maintain such parks and make such further improvements as specified in said Article, but the total tax for park improvements cannot exceed five cents on the one hundred dollar valuation.

It is also made plain in Article 6081e that it is limited to the issuance of bonds and that the proceeds of bonds issued under that Article may not be used for any purpose other than the purchase and improvements of land for park purposes. The ten cent tax authorized in that statute can be used only to pay the requirements of bonds issued thereunder.

Article 6078 and 6081e stand separately, and, if submitted at the same time, must be submitted separately on the ballot at an election authorized thereby, respectively, and may not be submitted jointly.

No limit is placed on the number of parks which may be acquired under either plan.

SUMMARY

When authorized by two-thirds vote of the qualified voters of the county, the Commissioners' Court may annually levy a tax not to exceed five cents on the \$100 valuation to purchase and improve county parks, and may levy an annual tax not exceeding five cents to maintain and pay for improvements of such parks. Art. 6078 V. C. S.

When authorized as provided in Chapter 1, Title 22, and Article 6081e, V.C.S., the Commissioners' Court may issue bonds to purchase and improve county parks and levy a tax not to exceed ten cents on the one hundred dollars valuation to pay interest and create a sinking fund to pay such bonds.

No limit is placed on the number of parks which may be acquired.

Yours very truly,

APPROVED:

*Jagan Dickson*  
FIRST ASSISTANT  
ATTORNEY GENERAL

WTW:wb

ATTORNEY GENERAL OF TEXAS

By

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