



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

September 28, 1964

**WAGGONER CARR
ATTORNEY GENERAL**

Honorable Joe Resweber
County Attorney
Harris County
Houston, Texas

Opinion No. C-316

Re: Construction of Article
4477-2, V.C.S., relating
to the levying of a tax
for mosquito control.

Dear Mr. Resweber:

Your request for an opinion reads as follows:

"The Commissioners Court has requested that this office obtain an opinion from you on the following questions.

"1. Does Article 4477-2 V.C.S. authorize the Commissioners Court to levy a tax not to exceed twenty-five cents on each One Hundred Dollar Tax valuation in the county (assuming that the same is authorized by an election pursuant to Section 2 of said Article) in addition to the constitutional limit placed on the Commissioners Court by Article 8, Section 9, of the Texas Constitution?

"2. In the event your answer to the first question is in the negative, is there any other authority for the Commissioners Court to levy a tax above the 80¢ limit prescribed by Article 8, Section 9, of the Texas Constitution, for the purpose of Mosquito Control?

"The local health authorities are of the opinion that Harris County has an epidemic of encephalitis, commonly known as 'sleeping sickness.' These health authorities are further of the opinion that the said disease is spread by the female Culex mosquito. In view of the said epidemic, the Commissioners Court feels that it is necessary to undertake a program of mosquito control within the county. However, Harris County now has a tax rate of eighty cents (80¢) on the One Hundred Dollars (\$100.00) valuation, none of

which funds is presently available for mosquito control.

"The Commissioners Court is familiar with Opinion of the Attorney General No. V-1116, dated November 6, 1950. However, in view of the importance of the matter, they desire you to determine whether or not the amendments (subsequent to the date of said opinion) to Article 8, Section 9, of the Texas Constitution and Article 4477-2 V.C.S., would have the effect of permitting a tax for mosquito control over and above the 80¢ limit provided in Article 8, Section 9, of the Texas Constitution.

"In our opinion, the amendment of Article 8, Section 9, of the Texas Constitution did not in any way modify the 80¢ limit.

"The amendment of Section 1 of Article 4477-2 V.C.S. only made the act applicable to all counties and portions of counties instead of only entire counties bordering on the Gulf, as originally enacted. The amendments of Sections 2 and 4 of Article 4477-2 V.C.S. merely increased the maximum amount the county could expend for mosquito control under said article from 5¢ to 25¢ on each \$100.00 tax valuation. Furthermore, even if the amendments to Article 4477-2 V.C.S. did purport to authorize a tax over and above the 80¢ constitutional limit, the amendment would be unconstitutional and of no force and effect.

"Passing to the second question, it will be noted that by Article 4418 f, V.C.S., the Commissioners Court is authorized to appropriate and expend money from the general revenues of its County for and in behalf of public health and sanitation within its County. However, we find no authority for a tax over and above the 80¢ constitutional limit for such purposes.

"CONCLUSION

"Harris County is authorized to expend county funds for mosquito control. However, the levy of taxes for such purpose must be a part of the 80¢

constitutional limit prescribed by Article 8, Section 9, of the Texas Constitution. In order to create a mosquito control district with the power to levy taxes over and above the 80¢ constitutional limit or to authorize the county to levy taxes over and above said limit, a constitutional amendment would be necessary."

Article 4477-2, Vernon's Civil Statutes, as amended by House Bill 721, Acts of the 57th Legislature, Regular Session 1961, chapter 498, page 1105, provides in part as follows:

"Section 1. In all counties of this State, the Commissioners Court may call an election within sixty (60) days after the effective date of this Act, and at subsequent elections when called by the County Judge upon his being petitioned by two hundred (200) qualified voters to call such election to determine if the qualified voters of such county desire the establishment of a Mosquito Control District to embrace all or a portion of the territory within said county, for the purpose of eradicating mosquitoes in said area. The form of the ballot shall be as follows:

"FOR the establishment of a Mosquito Control District in _____ County.

"AGAINST the establishment of a Mosquito Control District in _____ County.

"Sec. 2. The Commissioners Court in each county governed by the provisions of this Act may call an election within sixty (60) days after the effective date of this Act and at subsequent elections when called by the County Judge upon his being petitioned by two hundred (200) qualified voters to call such election to determine if the qualified real property taxpaying voters of said county or portion of said county desire a levy of a tax not to exceed twenty-five cents (25¢) on each one hundred dollar tax valuation to finance the program provided in this Act. The form of the ballot shall be as follows:

Hon. Joe Resweber, page 4 (C-316)

"FOR the levy of a tax of _____ cents on each one hundred dollar tax valuation to finance the Mosquito Control District within _____ County.

"AGAINST the levy of a tax of _____ cents on each one hundred dollar tax valuation to finance the Mosquito Control District within _____ County.

"Sec. 4. If the elections provided in Section 1 and Section 2 of this Act are in favor of the establishment of a Mosquito Control District and the levy of a tax not to exceed twenty-five cents (25¢) on each one hundred dollar tax valuation, the Commissioners Court is authorized to levy a tax not to exceed the amount fixed by the election; provided, however, that the Commissioners Court is authorized to lower the tax to any designated sum it may determine, should the approximate revenue be in excess of the needed revenue to carry out the provisions of this Act. The taxes so levied shall be collected by the County Tax Assessor and Collector and shall be deposited in a separate fund and be used for the purposes of carrying out the provisions of this Act and for no other purposes."

In Attorney General's Opinion V-1116 (1950), this office held:

"In view of the foregoing authorities, you are advised in answer to your second question that the tax levy authorized by Sections 2 and 4 of Article 4477-2 is not in addition to the constitutional limitation fixed by Section 9, Article VIII of the Constitution.

"In answer to your third question, it is our opinion that the cost of operating a Mosquito Control District created for public health purposes of the county must be paid out of the general fund. Att'y Gen. Op. V-567 (1948)."

The changes to Article 4477-2, Vernon's Civil Statutes, provided in the 1961 amendment, made the provisions of the Act applicable to all counties of the State rather than to the counties of the State which border on the Gulf of Mexico, and raised the authorized levy from not to exceed five cents on each \$100.00 valuation, to an authorization of a levy not to exceed twenty-five cents on each \$100.00 valuation. Therefore, the 1961 amendment did not affect the conclusions reached in Attorney General's Opinion V-1116.

Hon. Joe Resweber, page 5 (C-316)

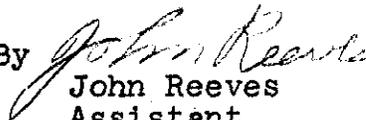
In view of the foregoing, we agree with your conclusion that Harris County is authorized to expend county funds for mosquito control; however, the levy of taxes for such purpose must be a part of the 80¢ constitutional limit prescribed in Section 9 of Article VIII of the Constitution of Texas. In order to create a mosquito control district with the power to levy taxes over and above the constitutional limit prescribed in Section 9 of Article VIII of the Constitution of Texas, a constitutional amendment would be necessary.

SUMMARY

A county is authorized to expend county funds for mosquito control; however, the levy of taxes for such purpose must be a part of the 80¢ constitutional limit prescribed by Section 9 of Article VIII of the Constitution of Texas.

Yours very truly,

WAGGONER CARR
Attorney General

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE

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