



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

October 13, 1964

Honorable Joe D. Carter
Chairman
Texas Water Commission
Austin, Texas

Opinion No. C-331

Re: Must a water district that seeks, pursuant to Article 7880-3a, to increase its powers to include that of sanitary sewage disposal accompany with its petition filed with the Texas Water Commission the \$250.00 deposit provided for in Article 7880-21 V.C.S.

Dear Mr. Carter:

In your letter you asked: "Must a deposit of \$250.00 accompany a petition filed with the Texas Water Commission pursuant to 7880-3a, said petition requesting the addition of sanitary sewer powers to a district which did not at the time of its creation have such power conferred upon it?"

The pertinent part of Article 7880-3a, Vernon's Civil Statutes provides that;

". . .the duty to hear and determine petitions for the creation of a district proposed to exercise the powers and functions in this Section provided shall, exclusively, be vested in the State Board of Water Engineers of the State of Texas, who shall hear and determine the same under the applicable provisions of Section 5 of Chapter 280, Acts of the Regular Session of the Forty-first Legislature. . . . And (7) any districts now or hereafter existing under the provisions of said Chapter 25, which district did not at the time of its creation have conferred upon it the powers in this Section provided for, may receive and assume the additional powers by this

Section provided for in the same manner and by the same procedures as are provided for in this Section. . . ."

Article 7880-21 V.C.S. provides in part that;

". . . A petition to be filed with said Board must be accompanied by a deposit of Two Hundred and Fifty (\$250.00) Dollars for the use of the State, as provided for other fees collected under this act; no part of which shall be returned, except as hereinafter provided. . . ."

Under Article 7880-3a, a water district seeking to obtain authority to provide for sanitary sewage disposal must do so "in the same manner and by the same procedures as are provided for in this Section." (Emphasis supplied.) The procedures to be followed are "the applicable provisions of Section 5 of Chapter 280, Act of the Regular Session of the Forty-first Legislature." Section 5 is now codified as Article 7880-21, V.C.S. This being a direct mandate to follow the procedure outlined by Article 7880-21 we see no other alternative but to say that this "procedure," like all others provided in Article 7880-21, must be followed. It would be an invidious distinction to say that when you file a petition to create a district with sewage disposal powers you must pay the deposit, while on the other hand a district which seeks to enlarge their powers to encompass this type of activity is exempt from the payment of such a deposit.

The purpose of the deposit is to help defray the cost of filing the petition and holding a hearing, and since both actions require that a petition be filed and a hearing held it would certainly be unjust to say that one should pay the deposit and the other should not. Such an interpretation would, in our opinion, do violence to sound statutory construction in that it would amount to unequal treatment of people in similar circumstances.

Therefore, you are respectfully advised that when a water district seeks to have the Texas Water Commission grant it the power to dispose of sanitary sewage, pursuant to Article 7880-3a, it must accompany with its petition the \$250.00 deposit provided for in Article 7880-21.

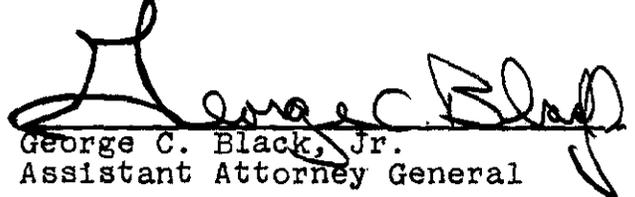
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S U M M A R Y

When a water district seeks to enlarge its powers to include that of sanitary sewage disposal, it must, pursuant to Article 7880-21 V.C.S., deposit \$250.00 as provided for in said Article.

Very truly yours,

WAGGONER CARR
Attorney General of Texas


George C. Black, Jr.
Assistant Attorney General

GCB:gm:dj

APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
John Reeves
Arthur Sandlin
Robert Owen
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APPROVED FOR ATTORNEY GENERAL
By: Roger Tyler