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December 9, 1997

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The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-1052

Opinion Committee

FILE # ML-39972-97
LD # 39972

RE: Authority of a Conservation and Reclamation District to Engage Peace Officers

Dear General Morales:

Pursuant to the authority provided in Subchapter C, Chapter 402, Government Code, I request your opinion on the following questions: Is it permissible for a conservation and reclamation district created pursuant to Article XVI, Section 59, of the Texas Constitution and operating under Chapter 49 of the Texas Water Code to contract for or employ peace officers in order to provide for general patrol of all areas within the district and with power to make arrests for any offense against the laws of the state? If so, is it permissible for such a district to use revenue from maintenance taxes for such purposes? If so, is it necessary for the election ballot authorizing the maintenance tax to make reference to employing peace officers or something similar?

Historically, municipal utility districts operating under Chapter 54 of the Texas Water Code had statutory authority to employ peace officers only to prevent the commission of an offense against the rules of the district or the laws of the state when the offense or threatened offense occurred on any land, water, or easement owned or controlled by the district, or to make an arrest in case of an offense involving injury or detriment to any property owned or controlled by the district (V.T.C.A., Water Code, §54.210, repealed effective September 1, 1995). See also V.T.C.A., Water Code, §50.062 (not repealed), §51.132 (repealed), §53.124 (repealed), and §55.251 (not repealed) with respect to other types of conservation and reclamation districts.

With the passage of Chapter 49 of the Texas Water Code, effective September 1, 1995, the power of districts (as defined in V.T.C.A., Water Code, §49.001(a)(1)) to engage peace officers was revised to allow a district to contract for or employ peace officers with power to make arrests with respect to "any offense against the laws of the state" (V.T.C.A., Water Code, §49.216).

Since the engagement of peace officers is not among the enumerated powers of conservation and

reclamation districts found in Article XVI, Section 59, of the Texas Constitution and since Chapter 49 of the Texas Water Code, as amended, provides for general law enforcement powers for such districts, I request your opinion as set forth above. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "David Counts". The signature is written in a cursive style with a large initial "D" and a stylized "C".

David Counts
Chairman