



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. V. C. Marshall, Chairman
State Soil Conservation Board
Professional Building
Temple, Texas

Dear Sir:

Opinion No. O-1353
Re: Soil Conservation District
elections.

Your request for an opinion on the questions as are herein set out has been received by this department.

Your questions are as follows:

"(1) Will husband and wife who own a farm be permitted to vote?

"(2) Would a land owner living in the incorporated cities and towns be permitted to vote who owned land outside the corporation and within a district?

"(3) Should an election be ordered by the Board in a proposed district who will be eligible to vote in such an election?

"(4) Should incorporated cities and towns be included as a part of a district?

"(5) Would the State Board be permitted under the law to post notices of an election or of public hearings rather than to publish same where there is a newspaper circulated within the territory?

"(6) Should appropriations for posting notices or holding elections be exhausted would there be any means by which the Board might continue holding elections and posting

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notices?

"(7) When certain funds appropriated for carrying out the law are exhausted how may the Board operate to carry out the law as is provided in setting up districts and to assist in the operation of districts?"

"(8) How may the board assemble information that will enable judges at an election to determine who is qualified to vote, when such information is made available to the judges at such election?"

Article 165a-4, Acts of the 46th Legislature, known and cited as the State Soil Conservation Law reads in part as follows:

"Definitions

"Sec. 3. Wherever used or referred to in this Act, unless a different meaning clearly appears from the context:

"....

"(12) 'Landowner' or 'Owner of Land (Lying Outside of Incorporated Cities) and Towns' includes any person who holds legal or equitable title of any lands lying within a Soil Conservation District organized under the provisions of this Act and who is a duly qualified voter within such district.

"....

"(14) 'Due Notice' means notice published at least twice, with an interval of at least seven (7) days between the two (2) publications dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous

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places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs, generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates."

Section 5 of the Act relative to the creation of soil conservation districts reads in part as follows:

".....All landowners within the boundaries of the territory as determined by the State Soil Conservation Board, shall be eligible to vote in such election. Only such landowners shall be eligible to vote.

"D. The Board shall pay all expenses for the issuance of such notices and the conduct of such hearings and elections, and shall supervise the conduct of such hearings and elections. It shall issue appropriate regulations governing the conduct of such hearings and elections, and providing for the registration prior to the date of the election of all eligible voters. All such elections held under the provisions of this Act shall be in conformity with the General Election laws of this State, except as herein otherwise provided, and except that the ballot shall not be numbered or marked for identification purposes.

"E. The Board shall publish the result of such election and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Board shall determine that the operation

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of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Board shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the Board shall give due regard to and weight to the attitudes of the owners of lands lying within the defined boundaries, the number of resident landowners eligible to vote in such election who shall have voted, the proportion of the votes cast in such election in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probably expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determinations, having due regard to the legislative determinations set forth in Section 2 of this Act, provided, however, that the Board shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least two-thirds of the votes cast in the election upon the proposition of creating of the district shall have been cast in favor of the creation of such district."

Paragraph H of Section 4 of the Act provides that:

"The State Treasurer shall have the care and custody of all funds and securities of the State Board and shall be liable on his official bond for the lawful care, custody, application and disbursement thereof. Any funds coming into the hands of the Treasurer of this State, as hereinafter provided, shall be by him credited to a special fund to be known as the State Soil

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Conservation Fund and the moneys hereafter deposited or credited in such fund are hereby appropriated to the use and benefit of the State Soil Conservation Board, as may be by said Board used in compliance with this Act. The Board shall provide and furnish a biennial audit by a State Auditor and Efficiency Expert and a report to the Governor of the State."

The appropriation for the use of the State Soil Conservation Board in the administration of the Texas Soil Conservation Law is provided therein. The General Departmental Appropriation Bill of the 46th Legislature, Senate Bill No. 427, does not include the State Soil Conservation Board among the state departments and agencies it covers.

Section 14 of the Texas Soil Conservation Law calls for the appropriation of the sum of Ten Thousand (\$10,000) Dollars for the purpose of creating and maintaining the State Soil Conservation Board until August 31, 1939. The purposes for which this sum may be expended are not itemized.

Section 14a provides for the appropriation of several sums for the two year period beginning September 1, 1939 and ending August 1, 1941. A specific sum is designated in each instance along with the purpose or purposes for which it may be expended. Under the heading "Expenses of District Organization, Hearings, Referenda and Supervision" the sum of Six Hundred (\$600) Dollars for the year ending August 31, 1940, and the sum of Four Hundred (\$400) Dollars for the year ending August 31, 1941 are earmarked for publication of notices. Likewise, a sum of Six Hundred (\$600) Dollars for the year ending August 31, 1940 and the sum of Four Hundred (\$400) Dollars for the year ending August 31, 1941, are earmarked for publication of results. Also, a sum of Twenty-one Hundred and Sixty (2,160) Dollars for the year ending August 31, 1940 and the sum of Fourteen Hundred and Forty (\$1,440) Dollars for the year ending August 31, 1941, are earmarked for election of District Supervisors and a sum of Six Hundred (\$600) Dollars for the year ending August 31, 1940, and Four Hundred (\$400) Dollars for the year ending August 31, 1941 are earmarked for publication of results and One Hundred and Twenty (\$120) Dollars for the year ending August 31, 1940

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and the sum of One Hundred and Eighty (\$180) Dollars for the year ending August 31, 1931 are earmarked for publication of hearing notices.

It is, of course, elementary law that money appropriated by the Legislature cannot be used for any other purpose than that specified in the appropriation bill without constituting a misapplication of public funds.

We quote from conference opinion rendered by the Attorney General's Department August 18, 1921, as follows:

"It is the law of the state that no part of the money appropriated by the Legislature can be used for any purpose other than the specific purpose named in the appropriation bill. An expenditure for a purpose other than the one for which the money was appropriated would be a misapplication of public funds. The Comptroller would not be authorized to draw its warrants on any funds or for any purpose except the purpose named in the Act, and the Treasurer would be without authority to honor a warrant on any fund for any purpose except that named in the appropriation bill."

This principle applies to all the several sums of money set forth in Section 14a and their respective purposes. In other words, money appropriated for one purpose cannot be used for another purpose even if there happens to be a surplus in the former and a shortage in the latter fund.

Regarding the method of selection, qualification and tenure of Soil Conservation District Supervisors the Act provides:

"All landowners within the district shall be eligible to vote in such election. Only such landowners shall be eligible to vote. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected Supervisors for such district. The Board shall pay all the expenses of such election, shall supervise the conduct thereof in conformity with the General Election Laws of this State, except as hereinafter otherwise provided, and except that the ballots

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shall not be numbered or marked for identification purposes; shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results thereof."

Regarding the adoption of land-use regulations the statute provides:

"The Supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct an election for submission of such regulations to the landowners within the boundaries of the district for their indications of approval or disapproval of such proposed regulations, and until after the Supervisors have considered the result of such election.... All landowners within the district shall be eligible to vote in conformity with the General Election Laws of this State, except as herein otherwise provided, and except that the ballot shall not be numbered or marked for identification purposes."

By virtue of the foregoing statute, you are respectfully advised that it is the opinion of this department that your questions should be answered as follows:

1. When a man and his wife own a farm within the boundaries of the territory as determined by the State Soil Conservation Board and reside within such territory, both the husband and wife shall be entitled to vote in the elections held under the Act, provided they are otherwise qualified under the Constitution and laws of this State.

2. A landowner living in the incorporated cities or towns who owns lands outside the corporate limits of such city or town within the boundaries of the territory as determined by the State Soil Conservation Board would not be permitted to vote in the elections held under the Act.

3. When an election is ordered by the Board in a

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proposed district all landowners within the boundaries of territory as determined by the State Soil Conservation Board shall be eligible to vote in such elections and only such landowners shall be eligible to vote, provided they are otherwise qualified under the Constitution and laws of this State. ✓

4. Incorporated cities and towns should not be included as a part of a district.

5. The State Board would not be permitted under the law to post notices of an election or public hearings rather than to publish such notices where there is a newspaper or other publication of general circulation within the appropriate area or territory, in compliance with Art. 29a, R. C. S.

6. When appropriations for posting notices or holding elections are exhausted the Act provides no other means by which the Board may continue holding such elections and posting notices and pay for the same until there is an appropriation by the Legislature for such purposes.

7. The Act contains no provision authorizing the Board in setting up districts and assisting in the operation of districts when funds appropriated for these specific purposes are exhausted.

8. The statute provides that the Board shall prescribe regulations governing the conduct of elections and the determination of eligibility of voters therein. The Act prescribes no manner by which the Board may assemble information that will enable judges at an election to determine who is qualified to vote. This matter is within the discretion of the Board.

Trusting that we have fully answered your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

APPROVED SEP 30, 1939

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ATTORNEY GENERAL OF TEXAS

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