



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Charles R. Martin  
County Auditor  
Harrison County  
Marshall, Texas

Dear Sir:

Re: Opinion No. O-5531  
Can the commissioners' court co-operate with land owners and taxpayers in the construction of a lake, or pond to serve as a protection of lands against continuing injury by soil erosion?

Your recent request for an opinion of this department on the above stated question has been received.

Sections 3 and 4 of Article 2372c, Vernon's Annotated Civil Statutes read as follows:

"Sec. 3. The Counties of the State are hereby declared to have the authority to employ, or permit to be employed, any road construction or other machinery or road equipment in the service of soil conservation and prevention of soil waste through erosion, whenever in the judgment of the County Commissioners' Court, entered upon the Minutes of the Court such machinery or equipment is not demanded for the service of building and the upkeep of the roads of the County; and shall provide for compensation to the County Road Fund, or the road funds of any defined district or authorized subdivision in the County, for such employment of road equipment.

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"Sec. 4. In the public service of conserving the soil fertility of the lands of the County, the Commissioners' Courts shall have the authority to co-operate with the land owners and taxpayers of the County in all judicious efforts for the preservation of the productiveness of the soil from avoidable waste, and loss of productiveness of agricultural crops necessary to the public welfare, through permission to use the machinery and equipment that may be made available by the County for such purposes under written contract, and the County shall receive from such landowners and taxpayers compensation, upon such uniform basis as may be deemed equitable, and proper, for the co-operation extended and services rendered, all such compensation or funds to the County to be paid into the Road and Bridge Fund of the County; and the County Commissioners' Court may provide for payments from landowners and taxpayers of the County at such stated intervals and in such amounts, as and when the County taxes are collected, as may be equitable, for the use of the equipment for the protection of lands against continuing immeasurable injury through soil erosion; provided that the Commissioners' Court or representative thereof shall not go upon the land of any owner to improve, terrace, protect, or ditch such land until requested to do so in writing by such owner; and provided further, that the Commissioners' Court or representative thereof shall not be required to do such improving, terracing, protecting, and ditching unless such Court shall determine that such work is of some public benefit and said Court elects to do the work. Acts 1931, 42nd Leg., p. 81, ch. 53."

From reading the above quoted statute it would seem that the commissioners' court is authorized to employ, and permit to be employed, any road construction or other machinery or road equipment, in the service of soil conservation

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and prevention of soil waste through erosion, whenever in the judgment of the county commissioners' court, such machinery or equipment is not demanded for the service of building and upkeep of county roads.

The statute also provides that compensation must be received from the land owners and taxpayers under written contract, upon an equitable uniform basis, for the co-operation extended and services rendered, such compensation to be paid into the Road & Bridge Fund of the county, and setting up a system for payments from such land owners and taxpayers.

Under the above statute the commissioners' court or representative thereof is not required to do the work of preventing soil erosion, unless said court elects to do so.

If under the circumstances presented to the commissioners' court, the court should find that building of a lake or pond, by use of the road equipment of the county, would prevent soil erosion of agricultural and other lands; and the finding should further be made, that no demand of such equipment for the service of building and the upkeep of county roads was in evidence; and such findings were entered upon the minutes of the court, it is our opinion that a contract for the use of the machinery for the construction of a lake which protects such lands against erosion of soil would be proper. Of course, the provisions of Sections 3 and 4 of Article 2372c, supra, as to compensation, contracts in writing, etc., should be fully met.

In connection with this opinion, it would seem that the very meaning of soil erosion indicates the wearing away of the land by the action of water. It is not at all inconceivable that geophysical conditions could exist where the construction of a lake or pond could result in preventing soil erosion. If this condition exists, and the finding of fact to that effect is made by the commissioners' court, it is our opinion that such a situation comes within the broad terms of the statute.

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The fact that livestock or inhabitants, incidentally, might use the water so impounded, would not, in our opinion, alter such a situation, provided that the purpose of the original construction and maintenance of such pond or lake serves as a protection of lands against soil erosion.

Trusting that the foregoing answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Eugene H. Catlett*  
Eugene H. Catlett  
Assistant

APPROVED AUG 23, 1943

*Gerald C. Mann*  
ATTORNEY GENERAL OF TEXAS

ENC:ff



APPROVED AUG 23, 1943

ATTORNEY GENERAL OF TEXAS

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