



**THE ATTORNEY GENERAL  
OF TEXAS  
AUSTIN, TEXAS**

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September 29, 1948

Hon. V. C. Marshall  
Executive Director  
Soil Conservation Board  
2nd Floor, Denman Bldg.  
Temple, Texas

Opinion No. V-693

Re: The authority of a Commissioners' Court to transfer funds and equipment of a wind erosion district to a soil conservation district.

Dear Sir:

Reference is made to your recent request which reads, in part, as follows:

"House Bill No. 978, as enacted during the regular session of the 44th Legislature for the State of Texas, and filed for record May 21st, 1935, provides for the organization of Wind Erosion Districts. House Bill 444, Acts of the 47th Legislature, regular session, provides for the establishment of soil conservation districts. . .

"When a Wind Erosion District, as provided for in House Bill No. 978, and a Soil Conservation District, as provided for in House Bill 444, embrace the same territory, and certain funds and equipment have accrued to the Wind Erosion District, may such funds or equipment, or both, be transferred by the Commissioners' Court, as the governing body of the Wind Erosion District, to the supervisors of the soil conservation district?"

House Bill No. 978, supra (Art. 165a-2, V. C. S.) is a law authorizing the creation and incorporation of Wind Erosion Conservation Districts coextensive with the area of any county in the State, by a vote of the people of the county in an election called by the Commissioners' Court, prescribing that the Commissioners' Court shall constitute the Governing Board of such dis-

tricts; providing that the Governing Board shall make an estimate of the costs of the improvement to be made and to make assessments against the property to be benefited by such improvements; providing that the function of a Wind Erosion Conservation District is to conserve the soil by the prevention of unnecessary erosion caused by winds.

H. B. 444, Acts of the 47th Legislature, 1941, (Art. 165a, V. C. S.) known as the State Soil Conservation Act, provides for a State Soil Conservation Board, for five State Districts, for District Supervisors and for a Soil Conservation Committee of four members in each county within each district to be appointed by the County Judges of the respective counties. Upon a petition of fifty landowners within the district the supervisors of any district may call an election for approval of an ordinance regulating and conserving the soil within the district.

Section 7 of said Act authorizes the State Soil Conservation Board to acquire property, real or personal, by purchase, lease, gift, or otherwise. Therefore, there is no doubt as to the authority of said Board to receive property from any source. However, it is a well settled principle of law that the Commissioners' Court does not have any authority except that which is expressly or impliedly conferred upon it by law. *Edwards County v. Jennings*, 33 S.W. 385; 15 C. J. 457, Sec. 103; 15 C. S. 537, Sec. 221; *G. H. & S. A. Ry. Co. v. Uvalde County*, 167 S.W.(2d) 305, error refused.

H. B. 978 does not authorize such power nor are we able to find any other statute authorizing same. On the contrary, Section 5 of Section 14 of H. B. 444 provides, in part, that:

"This Act shall not in anywise affect, impair, nor impinge upon the provisions of House Bill No. 978, Acts of the Regular Session of the Forty-fourth Legislature, under which Wind Erosion Conservation Districts have been created or may hereafter be created, but the same is expressly preserved in accordance with the terms thereof. . ."

In view of the foregoing it is our opinion that the Commissioners' Court as the Governing Board of a Wind Erosion District created under H. B. 978, 44th

Legislature, 1935, may not transfer funds or equipment of such district to the Supervisors of the Soil Conservation District created under H. B. 444, Acts of the 47th Legislature, 1941, even though such districts are comprised of the same territory.

SUMMARY

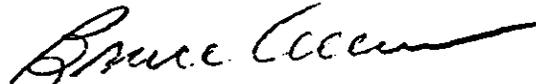
The Commissioners' Court may not transfer funds or equipment of a Wind Erosion District to the Supervisors of a Soil Conservation District, even though the districts are comprised of the same territory.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

BA:mw

By



Bruce Allen  
Assistant

APPROVED:



FIRST ASSISTANT  
ATTORNEY GENERAL