



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

January 23, 1958

Mr. A. C. Spencer  
Executive Director  
Texas State Soil Conservation  
Board  
1012 First National Bank Building  
Temple, Texas

Opinion No. WW-346

Re: Are soil conservation districts, as authorized in H.B. 444, Acts of the 47th Legislature, authorized to lease heavy equipment such as bulldozers, and maintainers, employ operators and use such equipment in carrying out soil conservation practices within the boundaries of the local soil conservation district? The District would charge the landowners for the use of such equipment.

Dear Mr. Spencer:

You have requested our opinion on whether soil conservation districts, as authorized in House Bill 444, Acts, 47th Legislature, Regular Session, 1941, chapter 308, pages 491-511 (Article 165a-4, V.C.S.); and hereinafter referred to as the State Soil Conservation Law, are authorized to lease heavy equipment such as bulldozers and maintainers, employ operators and use such equipment in carrying out soil conservation districts, and whether such districts could charge the landowners for the use of such equipment.

The following provisions of Subsections (1), (2), (3), (4), and (9) of Section 7 of the State Soil Conservation Law are pertinent to your inquiry.

"A Soil Conservation District . . . and the supervisors thereof shall have the following powers, . . .:

"(1) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in Subsection o [sic] of Section 2 of this Act, . . . on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interest in such lands;

"(2) To cooperate or enter into agreements with, and, within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, . . . any occupier of lands within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this Act;

"(3) . . . and to sell, lease, or otherwise dispose of any of its property . . . in furtherance of the purposes and the provisions of this Act;

"(4) To make available, on such terms as it shall prescribe, to land occupiers within the districts, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

". . .

"(9) As a condition to the extending of any benefits under this Act to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in the form of services, materials, or otherwise to any operation conferring such benefits, and may require land

occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon." (Emphasis ours)

Subsection (14) of Section 3 of the State Soil Conservation Law defines "Land Occupier" or "Occupiers of Land" as "any person, firm or corporation who shall hold title to or be in possession of any lands lying within a district organized under the provisions of this Act, whether as owner, lessee, renter, tenant or otherwise".

It is noted that the stated intent of Subsection (1) of Section 7 of the State Soil Conservation Law, supra, is to incorporate by reference certain measures listed in Subsection o of Section 2 of the Act; however, inasmuch as Section 2 does not contain a Subsection o, the reference is erroneous. This reference in the enrolled bill of the Act (H.B. No. 444, 47th Legislature, R.S., 1941, Ch. 308, p. 1364) is to "Subsection c of Section 2". Furthermore, in the enrolled bill, the third subsection of Section 2 is labeled "(c)". In view of the typographical error in the printed volume of General and Special Laws, 47th Legislature, Regular Session, 1941, and the form inconsistency in the enrolled bill, it is obvious that the reference in question correctly should be to Subsection (c) of Section 2 of the Act.

Subsections (1) and (2) of Section 7 of the State Soil Conservation Law, supra, authorize the supervisors of local soil conservation districts to undertake, in cooperation with the occupiers of private lands, the measures specified in the Act or other measures which achieve the purposes of the Act. The scope of this general directive, in our opinion, is of sufficient breadth to authorize the supervisors of local soil conservation districts to lease machinery and equipment belonging to the district to anyone classified as an "occupier of land", for use on lands lying within the district, provided such use accomplishes one or more of the objectives of the State Soil Conservation Law. This leasing authority is further supported by Subsection (3) of Section 7, supra, and also by the language of Subsection (4) of Section 7, supra, wherein the supervisors are authorized "to make available" to land occupiers, agricultural and engineering machinery and equipment to be used in the conservation of soil resources and for the prevention and control of soil erosion.

It is clear that if certain types of the equipment and machinery used to carry out many of these measures are to achieve the desired results, the services of skilled operators will be required. It is not difficult to visualize that in many instances, it would be a vain deed should the supervisors lease such equipment and not provide the lessee with an operator

capable of running the machine in such a manner as would insure that it performed the work for which it was designed. In our opinion, the aforementioned Subsections (1), (2) and (4) of Section 7 of the Act, supra, impliedly authorize the supervisors to furnish qualified operators of the machinery and equipment leased to the occupiers of private lands. Statutes impliedly authorize whatever is necessary to execute their commands. Terrell v. Sparks, 104 Tex. 191, 135 S.W. 519 (1911).

Although the purposes of the State Soil Conservation Law are served the use of equipment and machinery of the local districts on private lands, it is obvious that the accomplishment of such objectives also confers a direct benefit to these lands. Both the provisions of Subsections (4) and (9) of Section 7 of the Act, supra, authorize the local district supervisors to charge the lessees a consideration for the use of such equipment on their lands. Under these provisions, the supervisors of each soil conservation district are permitted to determine the amount of consideration that is to be charged for the lease of its equipment.

#### SUMMARY

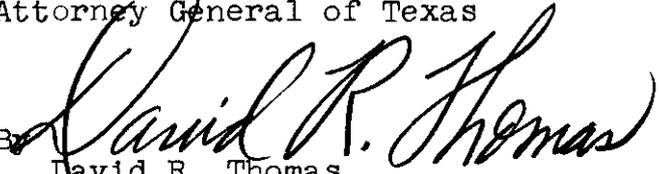
The supervisors of local soil conservation districts, under the provisions of the State Soil Conservation Law, (House Bill 444, Acts, 47th Leg., R.S., 1941, ch. 308, pp. 491-511), are authorized to lease equipment and machinery belonging to the district to the occupiers of private lands, for uses on such lands, lying within the boundaries of the district, which conform with the purposes of this law and in conjunction therewith, to furnish operators for such

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leased equipment and to  
charge the land occupier  
for its use.

Yours very truly,

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APPROVED:

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