



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 10, 1961

Hon. Holloway J. Martin
County Attorney
Limestone County
Groesbeck, Texas

Opinion No. WW-1049

Re: Authority of Limestone
County to enter into the
submitted proposed con-
tracts with certain soil
conservation districts,
et al.

Dear Mr. Martin:

You have asked three questions pertaining to two contracts which are being considered by Limestone County in regard to a flood control program which is being developed. The contracts provide that the County will work in conjunction with the U. S. Soil Conservation Service and the Soil Conservation District.

The first question you ask is whether the first provision of one of the contracts purports to contract away the County's discretionary power of eminent domain.

The contract provision provides:

"1. The District and/or the County will acquire without cost to the Federal Government such land, easements, or rights-of-way as will be needed in connection with the Works of Improvement. The County will not participate in the acquisition of land, easements or rights-of-way until the District has exhausted every reasonable possibility of such acquisition."

Articles 7048b, 1581e and 1109k, Vernon's Civil Statutes, confer contractual powers on the counties to enter into contracts with regard to flood control. Section 1, Article 1109k, provides that:

"All counties, cities, water control and improvement districts, drainage districts and other political subdivisions in the State of Texas are authorized to enter into contracts with soil conservation districts for the joint acquisition of right-

of-ways or joint construction or maintenance of dams, flood detention structures, canals, drains, levees and other improvements for flood control and drainage as related to flood control, and for making the necessary outlets and maintaining them; and providing further that such contracts and agreements shall contain such terms, provisions and details as the governing bodies of the respective political subdivisions determine to be necessary under all facts and circumstances.

Article 1581e, Vernon's Civil Statutes, declares that the counties shall have the right of eminent domain to condemn and acquire real property and easements and right-of-ways for flood control purposes.

If and when it becomes necessary to exercise the powers of eminent domain, the County may, of course, do so; clearly the county has that authority. Since the County has the power to so act, we fail to see why the County cannot agree that it will act. The power of eminent domain will be exercised by the County itself, if and when the need arises.

The second question pertains to a fourth provision of one of the contracts. The provision provides that: the County will "Budget annually sufficient funds to carry out the maintenance of these structures." The structures referred to are those which have been and will be constructed under the flood control project. The amounts which will be required are unascertainable at this time.

Article 1109k provides in part that:

"Sec. 3. All counties in the State of Texas are authorized to expend Permanent Improvement Funds for carrying out the purposes of this Act. . ."

In regard to the use of the permanent improvement fund, you have asked whether the above quoted provision of the contract creates a "debt" within the meaning of Section 7 of Article XI of the Texas Constitution.

Section 7, Article XI of the Texas Constitution provides:

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". . . But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund; . . ."

In McNeill v. City of Waco, 89 Tex. 83, 33 S.W. 322 (1895) "debt" is defined to mean ". . . any pecuniary obligation imposed by contract, except such as were, at the date of the contract, within the lawful and reasonable contemplation of the parties, to be satisfied out of the current revenues for the year, or out of some fund then within the immediate control of the corporation. . . ."

Such a provision creates a debt within the meaning of the Constitution. T. & N.O.R.R. Co. v. Galveston County, 141 Tex. 34, 169 S.W.2d 713 (1943).

By your third question, you ask whether funds appropriated to the Farm-to-Market and Lateral Road Fund may be used for flood control purposes. You state that the only issue voted upon and passed by the voters was:

"Whether said County shall levy, assess and collect an ad valorem tax of not to exceed thirty cents on each hundred dollars (\$100.00) valuation of all property within said Limestone County, except the first \$3000.00 value of residential homestead, for the construction and maintenance of Farm To Market Roads only."

Section 3, Article 7048a, Vernon's Civil Statutes, provides:

"Taxes levied and collected under the provisions of this Act shall be credited by the Commissioners Court to separate funds known as the Farm-to-Market and Lateral Road Fund, to be used solely for Farm-to-Market and Lateral Roads within such county, and to the Flood Control Fund, to be used solely for Flood Control purposes within such county, said credits to be made proportionately in accordance with the

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allocation adopted at the election called under the provisions of Sections 7 and 8 of this Act."

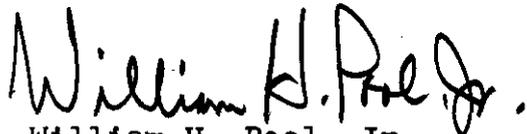
It is clear that the funds in question may not be used for flood control purposes.

S U M M A R Y

The County may contract to acquire right-of-ways needed under a flood control project. With regard to the Permanent Improvement Fund, a provision in a contract which obligates the County to budget annually sums uncertain to maintain flood control structures creates a debt within the meaning of Section 7, Article XI of the Texas Constitution. Funds allocated to the Farm-to-Market and Lateral Road Fund may not be expended for flood control purposes.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
William H. Pool, Jr.
Assistant

WHPjr:ljb

APPROVED:

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