



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

November 25, 1969

Honorable Harvey Davis  
Executive Director  
Texas State Soil and  
Water Conservation Board  
1018 First National Building  
Temple, Texas 76501

Opinion No.M-521

Re: Texas Torts Claims Act -  
Insurance purchases by Soil  
Conservation Districts from  
State appropriated money;  
power to tax to pay claims;  
and personal liability of  
District Directors

Dear Mr. Davis:

You have requested our opinion on behalf of the State Soil and Water Conservation Board, and its subordinate districts thereunder, seeking the answer to certain questions under the Texas Torts Claims Act (Chap. 292, Acts of the 61st Leg., R.S., 1969, page 874, effective January 1, 1970, codified as Article 6252-19, Vernon's Civil Statutes). Your central state agency and any local soil conservation district created thereunder can act only in a governmental capacity so as to carry out soil conservation practices and functions in cooperation with the Federal Government.

Your first question asks whether your state agency or districts created under the Soil Conservation Act, may purchase insurance covering liabilities of the state agencies or districts under the Texas Torts Claims Act from money received from the State or earnings from money received from the State? The answer to this question is "No" if payment is to be made out of money appropriated by the 61st Legislature.

There is a prohibition against expenditure of any such appropriated sums of money in the current biennium for the purchase of insurance to cover claims under the Torts Claims Act (General Appropriations Act, H.B. 2, 61st Leg., 2nd C.S., Art. V., General Provisions, Sec. 57).

The second question involves the matter of whether a State Soil and Water Conservation District can levy ad valorem taxes for the payment of a judgment under the Texas Torts Claims Act. The District cannot levy a tax to pay such judgment, without a favorable election therefor. By the provisions of the Texas Conservation Amendment (Art. XVI, Section 59, (c) Constitution of Texas), a soil and water conservation district is a reclamation district and, therefore, is subject to the proviso that:

"...the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall be first submitted to the qualified property taxpaying voters of such district and the proposition adopted." (Emphasis added.)

We duly note that under Section 2 (1), your agency and each local district are "units of government", and that Section 11 of the Torts Claims Act, provides for taxing power to districts which have a final judgment rendered against them under said Act. This provision insofar as it authorizes a tax levy without a prior vote of the voters of such district and insofar as it applies to districts created pursuant to the provision of Article XVI, Section 59 of the Constitution of Texas is inapplicable, as such would otherwise be in violation of the last proviso of Subsection (c) of said Conservation Amendment.

Your third and final question relates to whether local soil conservation district directors can become personally liable for not being able to satisfy a judgment should one arise under the Texas Torts Claims Act. Any functions performed by soil conservation districts, or by your state agency, are functions governmental in nature; such district or agency has no proprietary functions. Consequently, the directors of the Soil Conservation Districts, or the personnel in your agency, would not be personally liable as individuals for any such claim brought against the State of Texas. Section 14, Subsection (7) and Section (15), of the Texas Torts Claims Act. Your attention is further invited to the provisions therein which leave the voluntary methods of payment or non-payment of such a judgment by means of taxation, or by appropriation, to the "discretion" of those who govern your agency or the particular local soil conservation district involved.

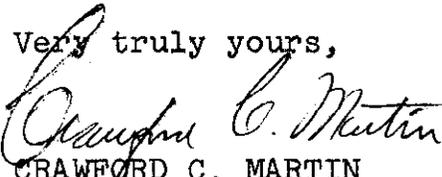
S U M M A R Y

The General Appropriation Act for the 1969-70 biennium prohibits purchase by soil and water conservation districts of any insurance covering liabilities under the Texas Torts Claims Act with appropriated money.

District directors are not personally liable under the Texas Torts Claims Act for failure to provide a method for payment of a final torts claims judgment.

Soil and water conservation districts cannot levy ad valorem taxes for the payment of a judgment indebtedness under the Texas Torts Claims Act without prior approval in an election by the voters of the district pursuant to Article XVI, Section 59(c), Constitution of Texas.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

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