



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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December 7, 1973

The Honorable James U. Cross  
Executive Director,  
Texas Offshore Terminal Commission  
701 Congress Avenue, Suite 302  
Austin, Texas 78701

Opinion No. H- 178

Re: Authority of the Texas  
Offshore Terminal  
Commission to develop  
a plan for onshore faci-  
lities to accommodate  
super-tankers

Dear Mr. Cross:

You have requested our opinion as to whether it is possible to develop a plan for onshore facilities to accommodate super-tankers under the mandate given your Commission by Chapter 12 of the Texas Water Code (Acts 1972, 62nd Leg., 4th C. S., ch. 14, p. 17).

An answer to your question requires an understanding of the nature of the Texas Offshore Terminal Commission.

The Legislature plainly stated its policy and intention in § 12.001 of the Water Code:

"It is the determination, policy and intent of the Legislature that the first priority of the Texas Offshore Terminal Commission is to develop a plan including the site location for an offshore terminal to accommodate supertankers at the earliest possible time." (Emphasis added)

After calling for the creation of the Commission, and providing for its membership and operation, the Code in §§ 12.061 and 12.062, sets out the general responsibilities to be implemented:

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"Section 12.061. In General

"The commission shall formulate general policy to govern the agency and its activities. The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

"Section 12.062. Development of Plan

"(a) The commission shall develop a plan leading to the development of deep draft harbors or terminals, either by the State of Texas, private interests or by a combination of public and private entities. The plan shall contain specific means by which the terminals may be financed and shall provide for cost studies as to the optimum development. The plan shall further contain, but not be limited to proposals for the use of facilities developed; sites considered for the facilities; design of the facilities; proposals for operating the facilities and for the maintenance of the facilities. The plan shall also contain a separate proposal for steps to be taken to insure the optimum protection of the environment. The plan shall include consideration of the legal jurisdiction for construction, maintenance and operation of the terminal facility; the legal aspects of financing and ownership of the facility; determination of responsibility and limits of liability for spills, pollution and other involvements resulting from operation of the terminal; necessary legislation to create an offshore terminal authority or other entity as a vehicle for the operation of the terminal; and any other important legal problems and considerations which must be answered before such an offshore terminal should be constructed. The plan shall also include socio-economic data to determine what this facility will do for the State's economy, what will happen to the economy of the State if the port is not built, and

what will be the dollars-and-cents benefits that the facility will bring about and how these will compare to its cost.

"(b) The commission may contract with local governments, regional planning commissions, planning agencies, and shall contract with colleges and universities in the state in preference to other sources when such colleges or universities have a better or equal capacity to render the service; and may further consider and contract with any other qualified and competent persons to assist the commission in developing and preparing the plan, but design and construction of the offshore port would reside within the private sector. This philosophy is in keeping with the legislative intent expressed in HCR 138, 62nd Legislature, Regular Session, 1971."

The Commission is instructed to carry out research "it considers advisable and necessary" (§ 12.063), to coordinate its work with other agencies having complementing or overlapping interests [§ 12.064(a)], and to make "necessary or convenient" contracts (§ 12.065).

The ultimate responsibility of the Commission is spelled out in § 12.066:

"(a) When the commission has prepared and examined the completed plan it shall hold such public hearings as may be necessary concerning the plan to determine if all aspects have been given adequate consideration. After the hearing the commission may amend the plan if in its opinion there is a necessity for such action and shall formally adopt the plan.

"(b) The commission shall present the plan to the first session of the Legislature occurring after the adoption of the plan. The commission shall also cause to be prepared such suggested legislation as may be necessary and desirable for the implementation of the plan."

Our consideration of the Act leads us to the conclusion that the Legislature was primarily concerned with having the Commission develop plans for an offshore terminal. If, as a result of its research, the Commission should determine that an offshore facility would not be physically possible, or would be economically unsound, or that an onshore facility would have advantages far outweighing those of an offshore terminal, the plan submitted by the Commission may include recommendations with reference to an onshore as well as an offshore terminal.

In § 12.067, the Savings Clause of this Act, it is stated:

"Nothing herein shall be construed in any way to limit, impair, change or curtail the power, authority and activities of existing port authorities, harbor authorities or navigation districts in the State of Texas, but all power, authority and activities now held and exercised by those various authorities or districts in the State of Texas are hereby specifically reserved to them; and none of the statutory law pertaining to those existing authorities or districts is amended, changed or repealed by the provisions hereof."

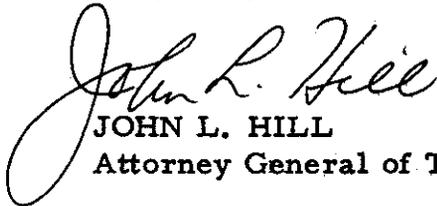
Since there are existing navigation districts and port authorities in this State which have the power to plan, construct, maintain and operate port facilities onshore (see §§ 60.32, 60.101, et seq., Texas Water Code, V. T. C. S.), it was apparently contemplated by the Legislature that they should continue to exercise these powers and duties notwithstanding the creation of the Texas Offshore Terminal Commission. The Commission was, in our opinion, created by the Legislature primarily to fill the void in the law with respect to the planning for offshore facilities which could not be undertaken by existing port authorities, navigation districts, and harbor authorities, although it did not preclude the Commission's consideration of onshore facilities where interference with existing authorities and districts would not result. Section 12.064 directs cooperation with such agencies.

#### S U M M A R Y

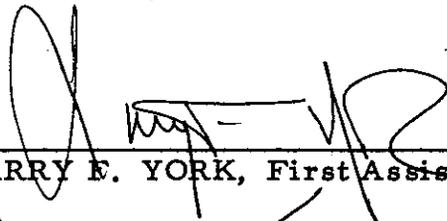
The Texas Offshore Terminal Commission is charged with the primary responsibility of developing plans for

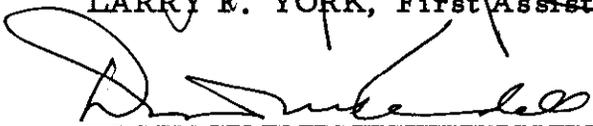
offshore terminal facilities. If, as a result of its research, the Commission should determine that an offshore facility would not be physically possible, or would be economically unsound, or that an onshore facility would have advantages far outweighing those of an offshore terminal, the plan submitted by the Commission may include recommendations with reference to an onshore as well as an offshore terminal.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
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Opinion Committee