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March 18, 1998

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Opinion Committee

Ms. Sarah Shirley
Chief
Opinion Committee
Office Of The Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-40161-98
I.D. # 40161

Re: Opinion Request

Dear Ms. Shirley:

I have been requested by the City of Edna to seek an opinion from the Attorney General. The question is whether the Jackson County County-Wide Drainage District has sole responsibility to provide for the control, storing, preservation and distribution of storm and flood water and for the reclamation and drainage of its lands and other lands needing drainage within the corporate city limits of the City of Edna. Enclosed is a brief prepared to assist you in your analysis.

Thank you for your prompt attention to this matter.

Sincerely,

ROBERT E. BELL

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Enclosure
c: Pam Guenther
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STATEMENT OF THE NATURE OF THE CASE

This is a case involving whether the drainage district or the city located within the drainage district has responsibility for the control, storing, preservation and distribution of storm and flood water and for the reclamation and drainage of its lands within the city limits.

STATEMENT OF FACTS

The Jackson County County-Wide Drainage District was approved and effective on May 14, 1969, in Chapter 200, Acts of the 61st Legislature, Regular Session, 1969 (Article 8280-412, Vernon's Texas Civil Statutes) and as amended on May 17, 1973 in Chapter 529, Acts of the 63rd Legislature, Regular Session, 1973 (V.A.T.S. Water Auxiliary Laws, Table III.).

The legislature created Jackson County County-Wide Drainage District as a conservation and reclamation district in Jackson County, Texas, under the provisions of Article XVI, Section 59, of the Texas Constitution; providing for a board of directors; prescribing the powers, duties, functions, and procedures of the District; providing for the acquisition of funds; providing for the issuance of bonds; providing for the abolition of existing drainage districts; containing a severance clause; declaring a public use and benefit; declaring that notice requirements have been followed; containing other provisions related to the subject; and declaring an emergency. Section 14 and Subsection (2), Section 15, Chapter 200, Acts of the 61st Legislature, Regular Session, 1969 (Article 8280-412, Vernon's Texas Civil Statutes) later amended the taxing authority of the Jackson County County-Wide Drainage District.

Section 1 of the Act provides the District was created and established to accomplish the purposes of Article XVI, Section 59 of the Texas Constitution to provide for the control, storing, preservation and distribution of storm and flood waters and for reclamation and drainage of its overflowed lands and other lands needing drainage. The District is authorized to exercise all powers, rights, privileges and functions which are now or may hereafter be conferred by General Law upon any drainage district or any water control and improvement districts created pursuant to or operating under Article XVI, Section 59, of the Texas Constitution in order to accomplish the purposes of the District, except as otherwise provided in this Act.

Section 2 of the Act provides the District contains all of the territory within the boundaries of Jackson County, Texas, whether presently in a drainage, conservation and reclamation, water control and improvement, or other type of district or political subdivision.

The City of Edna is a municipal corporation located within the jurisdiction and authority of the Jackson County County-Wide Drainage District. The City of Edna has a population of approximately six thousand five hundred (6,500).

ISSUE

Does Jackson County County-Wide Drainage District have responsibility to provide for and if so, to what extent the control, storing, preservation and distribution of storm and flood waters and for the reclamation and drainage of its lands and other lands needing drainage within the political subdivision of the City of Edna?

CONCLUSION

The state constitution and statutes provide that the reclamation and drainage of the state's overflowed lands are public rights and duties. Texas Constitution Article XVI §59 and Water Code §1.003(3). To this end, drainage districts are authorized and encouraged in the interest of good husbandry, the public health, the advancement of the general upbuilding of the country, and the rescuing of waste portions of lands to serve useful and profitable purposes. Jefferson County Drainage District v. McFaddin (1927, CA) 291 S.W. 322 affd (Com) 4 SW2d 33.

The drainage district stands on exactly the same footing as a county or precinct or any other such political subdivision. Harris County Drainage District v. Houston (1931, Com) 35 S.W.2d 118; Wharton County Drainage District v. Higbee (1912, CA) 149 S.W. 381, writ ref; Jones v. Jefferson County Drainage District (1940, CA) 139 S.W.2d 861, writ ref; Peters v. Matagorda County Drainage District (1940, CA) 146 S.W.2d 779, writ ref; American Surety Co. v. Hidalgo County (1926, CA) 283 S.W.267, writ ref.

The board of a drainage district has general authority to supervise and control the construction and maintenance of canals, drains, ditches, levees, and other improvements and it is its duty to keep these improvements in repair. The board is also authorized to make changes in, add to, and improve the drainage systems. And a district may construct necessary railway and road bridges and culverts. The letting of contracts for construction and other necessary works also rests with the board, which also has the authority to contract with a conservation district for the joint acquisition of rights-of-way or for joint construction or maintenance of flood control facilities.

In addition, the district's board may acquire necessary rights-of-way by gift, grant, purchase, or condemnation. The drainage district may exercise the power of eminent domain to condemn and acquire rights-of-way through public and private lands necessary for making canals, drains, levees and improvements in the district, and for making necessary outlets to any county in the state.

Canals, drains, ditches, and levees made and watercourses cleaned or constructed by a drainage district, and a person owning land in the district may drain water into one or more of these public drains. A city that has extended its boundaries so as to include the territory in a drainage district and has acquiesced in the establishment and improvement of drains in that territory on the part of the district may be enjoined by the district from seizing and converting to its own use, without permission, such drains and canals, although the district cannot prevent the city from making improvements necessary for health and protection of its citizens, insofar as they do not conflict with the rights of the district. Harris County Drainage District v. Houston (1931 Com) 35 S.W.2d 118.

The constitution grants to the legislature the power of taxation. Since the drainage district is a department of the government, the legislature may provide and has provided for the levy of taxes for its upkeep.

The Jackson County County-Wide Drainage District was specifically established under the provisions of Article XVI, Section 59, of the Texas Constitution to provide for the control, storing, preservation and distribution of storm and flood water and for the reclamation and drainage of its overflowed lands and other lands needing drainage within the boundaries of Jackson County, Texas whether presently in a drainage, conservation

and reclamation, water control and improvement, or other type of district or political subdivision. The City of Edna is located within the boundaries of Jackson County, Texas. Jackson County County-Wide Drainage District should have the sole responsibility to provide for the control, storing, preservation and distribution of storm and flood waters and for the reclamation and drainage of its lands and other lands needing drainage within the City of Edna.