



**THE ATTORNEY GENERAL  
OF TEXAS**

**JOHN BEN SHEPPERD**  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

September 29, 1954

*overruled by Com. Ct.  
of Matagorda County  
vs Matagorda Drainage  
Dist No 15 (in app)  
278 SW (2d) 539*

Honorable R. F. Peden, Jr.  
County Attorney  
Matagorda County  
Bay City, Texas

Letter Opinion No. MS-156

Re: Authority of the Commissioners' Court to levy a maintenance tax for a drainage district where all bonds of the district have been retired.

Dear Mr. Peden:

Your letter of September 17, 1954, presents the following question:

"Does the Commissioners' Court have authority to levy and cause to be collected a maintenance tax for a drainage district created pursuant to Section 52, Article III, Constitution of Texas, and the general laws of the State of Texas (Chapter 7, Title 128, Revised Civil Statutes) where there has been no election to authorize such tax and where all bonds of the district have been retired?"

Although the State has the inherent power of taxation, a political subdivision, such as a drainage district created under Article III, Section 52 of the Texas Constitution, has only such taxing power as granted by the Constitution and applicable statutes. Dallas County Levee Dist. #2 v. Looney, 109 Tex. 326, 332; 207 S.W. 310 (1918); Wharton County Drainage District #1 v. Higbee, 149 S.W. 381 (Tex. Civ. App. 1912) error ref.

Article 8138, Revised Civil Statutes, 1925, reads, in part, as follows:

"At the same time that taxes are levied to meet the bonded indebtedness, the Court shall cause to be assessed and collected taxes upon all property in the district, whether real, personal or otherwise, sufficient to maintain, keep in repair, and to preserve the improvements in the

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district, and to pay all legal, just and lawful debts, demands and obligations against such district. . . "

There being no bonded indebtedness, the district would have no right, under the above statute, to levy a maintenance tax.

Thus, it becomes unnecessary to determine the second phase of your question as to whether a maintenance tax can be levied without affirmative permission being given by those entitled to vote.

Your question is answered in the negative.

Very truly yours,

JOHN BEN SHEPPERD  
Attorney General of Texas

by s/ Elbert M. Morrow  
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Assistant

EMM-s:egw