



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2020

The Honorable Pam Guenther
Jackson County Criminal District Attorney
115 West Main, Room 205
Edna, Texas 77957

Opinion No. KP-0319

Re: Authority of the Jackson County County-Wide Drainage District to set a tax rate and to levy and collect taxes without commissioners court approval (RQ-0328-KP)

Dear Ms. Guenther:

You ask about the respective flood-control tax authority of the Jackson County County-Wide Drainage District (the “District”) and the county commissioners court.¹ You tell us that county voters approved a proposition in 1967 for the County to levy and collect a 30-cent tax per \$100 value for flood control under article VIII, section 1-a of the Texas Constitution. *See* Request Letter at 1. The Legislature created the District in 1969 and amended provisions concerning its authority in 1973. *See id.* at 2; Act of May 1, 1969, 61st Leg. R.S., ch. 200, 1969 Tex. Gen. Laws 587 (“Act of 1969”), *amended by* Act of May 24, 1973, 63d Leg., R.S., ch. 529, 1973 Tex. Gen. Laws 1378 (“Amending Act”). You state that the District and the County entered into a contract by which “the District submits a budget to the County to enable the County to assess and collect [the flood-control] tax (up to \$.30 statutory limitation) sufficient to meet the revenue requirements of the District.” Request Letter at 2. You tell us the District has set aside funds from tax revenue in several budget years to accrue the necessary resources for larger capital expenditure projects. *See id.*

You state that the commissioners court requires the District to justify its budget, and that “[t]he District’s perception is that the County has indicated an intent to divert funds set aside for these capital expenditures from the District for the use and benefit of the County.” *Id.* You ask:

¹*See* Letter from Honorable Pam Guenther, Jackson Cty. Crim. Dist. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Dec. 20, 2019), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0328KP.pdf> (“Request Letter”).

(1) whether the District has “the independent authority to set the District’s tax rate, [and to] levy and collect taxes without the [commissioners court’s] approval”;

(2) whether the District has “the independent authority to determine the viability and priority of projects, including amounts set aside for capital expenditures that may exceed a budget year, issuing bonds or other forms of indebtedness and conducting all business operations necessary to accomplish flood control” without the commissioner court’s approval; and

(3) whether the commissioners court, if it disagrees with the District’s allocation of funds, has “the authority to re-appropriate the District’s funds to purposes other than flood control, such as to supplement the County’s general operating fund.”

Id. at 1.

The Legislature created the District as a conservation and reclamation district with the authority of a flood control district, drainage district, or other article XVI, section 59 district. Act of 1969, § 1 at 587; *see* TEX. CONST. art. XVI, § 59(b). A commissioners court and a water district both have limited, defined authority, in that each has only the powers expressly granted by the Constitution or statute or implied from such a grant. *See City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003) (concerning commissioners court authority); *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940) (orig. proceeding) (concerning special water district authority). Thus, we look to the Constitution and statutes to determine the respective authority of the District and the commissioners court.

Article VIII, section 1-a of the Texas Constitution provides:

[C]ounties of the State are authorized to levy ad valorem taxes upon all property within their respective boundaries for county purposes, . . . not to exceed thirty cents (30¢) on each One Hundred Dollars (\$100) valuation, in addition to all other ad valorem taxes authorized by the Constitution of this State, provided the revenue derived therefrom shall be used for construction and maintenance of Farm to Market Roads or for Flood Control.

TEX. CONST. art. VIII, § 1-a. The implementing statutes authorize counties to impose a tax under the provision through an election containing a proposition for farm-to-market and lateral road purposes, flood control purposes, or both. *See* TEX. TRANSP. CODE § 256.054(a), (c). If the proposition passes, the commissioners court “shall impose the tax each year in the same manner as other county ad valorem taxes.” *Id.* § 256.054(e). Taxes authorized by a flood-control proposition must be placed in a separate flood-control fund. *Id.* § 256.004. The “flood control fund of a county is under the jurisdiction and control of the commissioners court.” *Id.* § 256.006(a). “Money in the fund may be used only for flood control purposes in the county and political

subdivisions of the county.” *Id.* “All or part of the money in the fund may be used in connection with the plans and programs of . . . [a] flood control district.” *Id.* § 256.006(c)(3). Finally, “[p]lans for an improvement constructed with money from the fund must be approved by the county.” *Id.* § 256.006(d).

Article XVI, section 59 of the Texas Constitution authorizes the Legislature to create conservation and reclamation districts as “governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law” and to provide for the levy and collection of taxes. TEX. CONST. art. XVI, § 59(b), (c). The Act of 1969 creates the District as a conservation and reclamation district with the general powers of a flood control, drainage, or other article XVI section 59 district. Act of 1969, § 1 at 587. In addition to general powers, the Act of 1969 provides in section 11:

The District may devise plans and construct facilities to:

- (1) lessen and control floods and excess waters;
- (2) provide drainage facilities and improvements for the reclamation of the lands in the District;
- (3) remove natural or artificial obstructions from the streams and watercourses in the district; and
- (4) clean, straighten, widen, and maintain the free flow of streams and watercourses in the District.

Id. § 11(b) at 589. The District is authorized to contract with the commissioners court “to carry out flood control and drainage projects.” *Id.* § 11(e) at 590.

Although later amended, sections 14 and 15 concern the District’s funding through taxes and bonds. *Id.* §§ 14, 15 at 590–91. Section 14 of the Act of 1969 provides that the “District is not vested with taxing power.” *Id.* § 14(a) at 590. The section further states that the District’s purposes are to be carried out by funds “acquired through a levy of taxes and the issuance of bonds . . . by the commissioners court,” and the District is to contract with the commissioners court for the appropriation of the funds. *Id.* § 14(b), (c) at 590; *see also id.* § 11(e) at 590 (concerning contracting). Section 15 authorizes the District to issue bonds contingent on a bond election and secured by revenue from the contract with the commissioners court and other funds. *Id.* § 15 at 590–91; Amending Act § 2 at 1379.

Section 14 and subsection 15(a) were amended to give the District the authority to levy and collect a tax up to 75 cents on each \$100 valuation and secure bonds with revenue from the tax, distinct from the article VIII, section 1-a tax authority. Amending Act §§ 1, 2 at 1378–79. But the District’s potential taxing authority is contingent on approval of the voters at an election called for that purpose. *Id.* You do not tell us of any elections following the original 1967 election. Assuming no subsequent elections occurred, the voters never granted taxing authority for the District. Thus, the commissioners court, not the District, possesses the only authority to levy a

tax, as approved by the voters in 1967. *See* TEX. TRANSP. CODE § 256.054(e); *see also* Act of 1969 § 14(b), (c) at 590.² To answer your first question, the District does not possess independent authority to set the flood control tax rate and to levy and collect taxes absent an election granting it such authority. *See* Request Letter at 1.

In your second question, you ask whether the District possesses authority independent of the commissioners court for conducting general operations and business, planning capital improvements, and issuing bonds. *See id.* The District is not a department or subdivision of the County. Although it may share the same geographic jurisdiction with the County, a county-wide flood control district is a distinct political subdivision, separate from the County. *See* Act of 1969, §§ 1, 2 at 587–88; *Harris Cty. Flood Control Dist. v. Mann*, 140 S.W.2d 1098, 1101 (Tex. 1940). An article XVI, section 59 water “district is a political subdivision exercising State powers and such districts stand upon the same footing as a county.” *S. Plains Lamesa R.R., Ltd. v. High Plains Underground Water Conserv. Dist. No. 1*, 52 S.W.3d 770, 774 (Tex. App.—Amarillo 2001, no pet.). The Act of 1969 grants the District the general powers of a constitutional drainage district or water control and improvement district and the powers necessary to accomplish its purpose. Act of 1969, § 1 at 587. The statutes do not give the commissioners court the authority to generally supervise the District’s operations and business. Under the Act’s terms, the District possesses specific authority to plan and construct facilities for drainage control and other specified projects. *Id.* §§ 11(b), 12 at 589–90. However, section 256.006(d) of the Transportation Code specifically authorizes the commissioners court to approve “[p]lans for an improvement constructed with money” derived from the constitutional tax. TEX. TRANSP. CODE § 256.006(d). And while the District has potential authority to issue bonds, to do so it must first call an election and obtain the voter’s approval. *See* Act of 1969, § 15(b)–(j), (17) at 591–92; Amending Act § 2 at 1379.

Finally, you ask whether the commissioners court may re-appropriate District funds set aside for capital expenditure projects to purposes other than flood control, such as to supplement the county general fund. Request Letter at 1. Article VIII, section 1-a of the Constitution authorizes a tax only for farm to market and flood control purposes. *See* TEX. CONST. art. VIII, § 1-a. By statute, revenue derived from a flood control tax proposition must be segregated and used solely for flood control purposes. TEX. TRANSP. CODE §§ 256.004, .006. In the 1967 election, the voters approved a proposition authorizing a special tax “for flood control purposes.” *See* Request Letter at 1.³ Diverting funds derived from the flood control tax to non-flood control purposes would violate not only article VIII, section 1-a and enabling statutes, but also the County’s constitutional contract with the voters. *See San Saba Cty. v. McCraw*, 108 S.W.2d 200, 203 (Tex. 1937); *see also* Tex. Att’y Gen. Op. No. GA-0156 (2004) at 7 (stating “Texas courts have held that the express terms of resolutions and orders calling a tax or bond election, at which voters are asked to approve financial undertakings of a governmental body relating to the purposes for which funds shall be used, become a contract with the voters”). Thus, the commissioners court

²The Act of 1969 leaves District funding primarily to the contract between the District and the commissioners court. *See* Act of 1969 §§ 11(e), 14(b), (c) at 590. You do not raise, and we do not address, any issues concerning the contract.

³*See also* Jackson Cty. Comm’rs Ct., *Order Canvassing Returns & Declaring Results of Special County Election* (Nov. 13, 1967) (attached to Request Letter as “Exhibit D” and on file with the Op. Comm.).

may not re-appropriate District funds set aside for capital expenditure projects to purposes other than flood control.

S U M M A R Y

The county commissioners court possesses the authority to levy and collect the flood control tax authorized by article VIII, section 1-a of the Texas Constitution. Absent an election granting it authority, the Jackson County County-Wide Drainage District does not possess authority to levy, set the rate, and collect a flood control tax. The county commissioners court does not possess general authority to supervise the District's operations and business, but the commissioners court must approve District plans for improvements constructed with revenue derived from the article VIII, section 1-a tax. The Texas Constitution, enabling statutes, and the County's contract with the voters prohibit the commissioners court from diverting District funds derived from the flood control tax to non-flood control purposes.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant Attorney General

RYAN M. VASSAR
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

WILLIAM A. HILL
Assistant Attorney General, Opinion Committee.