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MAY 23 2000

OPINION COMMITTEE

May 22, 2000

RQ-0234-JC

**Office of the Attorney General**  
Opinion Division  
P.O. Box 12548  
Austin, TX 78711-2548

FILE # Mh-41431-00  
I.D. # 41431


REQUEST FOR ATTORNEY GENERAL OPINION

This is a request for an Attorney General's opinion as to whether or not a Water Control and Improvement District may incur indebtedness which will extend beyond the ability of the road district to pay in one (1) year, or;

May the Water Control District incur indebtedness over a period more than one (1) year without imposing a property tax by the approval of two-thirds of the voters of the district.

Attached is a more detailed outline of the request. Thank you for your opinion concerning this request.

Yours truly,

  
Charles D. Penick  
Criminal District Attorney

CDP:ec  
cc: Ernie Bogart

1 DATE

2 Honorable Attorney General  
3 State of Texas

4 RE: Bastrop County Water Control and Improvement District #2  
5 (WCID#2)

6 Dear Sir:

7 Charles Penick, Criminal District Attorney for Bastrop County,  
8 Texas, makes this request for an Attorney General's Opinion in  
9 behalf of Bastrop County Water Control and Improvement District #2.  
10 WCID#2 is a duly authorized water control and improvement district  
11 created by Commissioners Court of Bastrop County, Texas, on or  
12 about the 23rd day of September, 1985, and confirmed by an election  
13 held on October 1, 1989.

14 In 1989, under House Bill No. 2341, road district authority was  
15 granted to WCID#2. This original authority expired after two (2)  
16 years and was extended by House Bill No. 2901 for an additional  
17 four (4) years. In 1995, a Bill to extend the road district  
18 authority failed to pass because of a filibuster unrelated to the  
19 Water District's road district authority. In 1997, the current  
20 enabling legislation was passed under House Bill No. 706. A copy  
21 of that Bill, for convenience, is attached to this request for an  
22 Attorney General's Opinion.

23 WCID#2, in particular with regard to its road district authority,  
24 is a district created under §52, Article 3, of the Texas  
25 Constitution. §6 of the enabling legislation provides for a  
26 monthly charge of \$5.00 per developed or undeveloped lot, tract or  
27 reserve located within the District for road district purposes. §7  
28 permits the Water District Board to issue bonds or authorize a tax  
29 under the Act only with the approval of two-thirds (2/3) of a  
30 majority of the voters of the District, who vote on a special  
31 election called and held for that purpose. That same section  
32 contains a restriction limiting the value of such bonds to one-  
33 fourth (1/4) of the assessed value of the real property within the  
34 District.

35 The Water District has never, under its road district authority or  
36 otherwise, authorized any tax or held any election for the approval  
37 of a tax or the issuance of bonds. The only source of income for  
38 purposes of implementing the road district purposes is the monthly  
39 road district fee provided for under §6.

40 It has been the policy of the road district, up until this time, to  
41 authorize road construction only to the extent that road district  
42 fees have been collected and are available for payment of contracts

1 upon completion. This has restricted the amount of road work that  
2 can be done in any given year. The District Board would like to  
3 borrow the funds necessary to complete a larger project, with  
4 repayment of such loan to be made from the road district fees which  
5 are collected annually. The economies of scale would permit the  
6 road district to complete significantly larger portions of roads at  
7 a substantial savings.

8 Because of the unique method of funding available to WCID#2, I have  
9 been unable to find any direct authority with regard to the  
10 authority of the Road District to borrow money without prior voter  
11 approval. The District's annual Road District Fee originally  
12 approved by the voters and set by the Legislature is not subject to  
13 change by the District without legislative authority. It is clear  
14 that the District would require an election in order to issue bonds  
15 and would require an election in order to impose any tax. The only  
16 authority that I have been able to find interpreting and applying  
17 the available constitutional and statutory provisions dealing with  
18 road districts is found in an Attorney General's Opinion requested  
19 by this office, which letter was issued on December 27, 1990,  
20 Opinion No. JM-1276. This Opinion was for a road district created  
21 under Art. 3, §52 of the Texas Constitution and in accordance with  
22 the procedures under the County Road and Bridge Act, Art. 6702-1 of  
23 Vernon's Texas Annotated Statutes. One of the questions presented  
24 in that Opinion was:

25 "Can the road district created under Art. 6702-1 [V.T.C.S.]  
26 borrow money in any other manner than through the issuance of  
27 bonds as set out in the statute?"

28 And, in the response, the Attorney General said:

29 "We conclude that road districts may borrow money by methods  
30 other than through the issuance of bonds, but the creation of  
31 such debt is governed by Art. 3, §52 of the Texas Constitution  
32 and legislation enacted pursuant to that provision."

33 The text of the Opinion should be reviewed for its full content,  
34 but the substance was that, there being no other statutory  
35 provision, the road district could only borrow money by issuing  
36 bonds or by notes in anticipation of bonds under laws that existed  
37 at that time. They did not that tax anticipation notes could be  
38 issued for purposes for which taxes could be levied, but those  
39 notes were to be secured with taxes levied by the district within  
40 the succeeding twelve months."

41 The Attorney General's Opinion with regard to that question ended  
42 with the statement:

43 "We are aware of no other legislative provision authorizing a  
44 road district to incur debt."

1 Under current law, there is a provision for giving road districts  
2 the authority to borrow money. WCID#2, having been granted all  
3 authority of road districts not inconsistent with the granting  
4 statute, would appear to have whatever authority other road utility  
5 districts have. The Transportation Code provides:

6 "The district may borrow money for any purpose authorized  
7 under this Chapter." §441.158, Vernon's Texas Code Annotated,  
8 Transportation Code (1999).

9 This Code as enacted in 1995 and there does not appear to be any  
10 decisional law concerning the extent of this grant of authority  
11 under the Transportation Code. Assuming that this grant of  
12 authority is not restricted constitutionally, then the Code would  
13 permit the District borrow money which may be paid back over a  
14 period of time greater than one year from existing revenues without  
15 a taxpayer election. If the Attorney General's office should  
16 conclude that constitutional limitations would prohibit this course  
17 of action, then it is my position that the District could create  
18 indebtedness other than bonded indebtedness by submitting the  
19 matter to the voters and obtaining a two-thirds approval without  
20 imposing a property tax.

21 With this background and information, the Board of WCID#2 would ask  
22 that the Attorney General's office give its opinion with regard to  
23 the following questions:

- 24 1. If the Water District, acting under its road district  
25 authority does not impose a property tax but looks only to the  
26 road district fees for the repayment of the debt, may the  
27 District, under its road district authority, incur  
28 indebtedness which will extend beyond the ability of the road  
29 district to pay in the current year without holding a property  
30 owners election in the District?
- 31 2. If the answer to question #1 is in the negative, then the  
32 Water District Board wishes to submit this question: May the  
33 Water District Board incur indebtedness requiring repayment  
34 over a period of more than one (1) year, without imposing a  
35 property tax, with approval of two-thirds (2/3) of the voters  
36 in accordance with the requirements of the statute, for  
37 incurring indebtedness?

38 If additional information is needed, please contact this office.

39 Respectfully submitted,

40 Charles Penick  
41 Criminal District Attorney for Bastrop County, Texas