

RECEIVED

SEP 19 2001

OPINION COMMITTEE



Hale County Attorney's Office

500 Broadway Street, Suite #80, Plainview, Texas 79072-8050
(806) 291-5306 • Fax (806) 291-5308 • Email: cdprentice@halecounty.org

Chris D. Prentice
County Attorney

Jolina Flowers
Administrative Assistant

RQ-0438-JC

FILE # ML-42161-01
I.D. # 42161

Tuesday, September 18, 2001

Office of the Attorney General of Texas
ATTN: Chair, Opinion Committee
Post Office Box 12548
Austin, Texas 78711-2548

**VIA FAX TRANSMISSION
FAX NO. 512-472-6538
AND FIRST CLASS U.S. MAIL**

RE: Whether the designated representative of an authorized agent of the Texas Natural Resources Conservation Commission has the authority to act as a peace officer under the provisions of the Texas Water Code, §7.193 and §26.215.

Dear Committee Chair:

Please consider the attached request with its accompanying background in Support of Request and return your response to my office at the address shown above.

If you should have any additional questions regarding this matter, please contact my office at your earliest convenience.

Respectfully submitted,

CHRIS D. PRENTICE
HALE COUNTY ATTORNEY

Opinions Committee
SEPTEMBER 18, 2001
PAGE 2 OF 3 PAGES

QUESTION PRESENTED

1. Can the Designated Representative, (a County employee), of an Authorized Agent, (Hale County, pursuant to the approval of the Texas Natural Resources Conservation Commission, hereinafter "TNRCC"), for purposes of §7.193 and §26.215 of the Texas Water Code, as amended, act as peace officers with the powers granted under Chapter 2 of the Texas Code of Criminal Procedure, as amended?

Background.

Under Chapter 366 of the Texas Health & Safety Code, a county or other political subdivision of the State may elect to become an authorized agent for the State for purpose of enforcing and implementing the laws, rules, and requirements of the use of on-site sewage disposal facilities and systems (hereinafter "OSSF").

In Attorney General Opinion No. DM-343, (April 28, 1995), page 2, that Opinion concluded that, with approval of the TNRCC, a municipality could regulate OSSF's pursuant to Chapter 366 of the Health & Safety Code. Just as a municipality may elect to regulate OSSF's, so may a County: such is the case with Hale County.

In w §7.193, Texas Water Code (Vernon's 2001), it states:

"For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are peace officers. Those agents and employees are empowered to enforce this subchapter the same as any other peace officer and for that purpose have the powers and duties of peace officers assigned by Chapter 2, Code of Criminal Procedure."

Texas Water Code §7.193

Opinions Committee
SEPTEMBER 18, 2001
PAGE 3 OF 3 PAGES

Additionally §26.215 of the Texas Water Code (Vernon's 2001), states:

"For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. These agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose shall have the powers and duties of peace officers as set forth in the Code of Criminal Procedure, 1965, as amended."

Texas Water Code §26.215

Are the "authorized agents referred to in the foregoing statutes referring to the same authorized agents described in Chapter 366 of the Texas Health & Safety Code? If so, then do the Designated Representatives of said authorized agents have the same authority as peace officers granted to employees of the Texas Parks & Wildlife Department? If the Designated Representative has such power, may they issue citations or make arrests?

My research has resulted in no cases or other Attorney General Opinions on this query. The Designated Representative of Hale County, an Authorized Agent under Chapter 366 of the Health & Safety Code has requested that this matter be clarified by your committee.