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**OPINION COMMITTEE**

SENATOR GLENN HEGAR  
DISTRICT 18

February 4, 2013

FILE # ML-47218-12  
I.D. # 47218

**RQ-1109-GA**

The Honorable Gregg Abbott  
Attorney General  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

Re: Whether a Water Control and Improvement District may adopt rules to enforce illegal dumping provisions of Chapter 365.01 of the Texas Health and Safety Code and adopt rules to enforce weed control

Dear General Abbott:

Pursuant to the authority to issue advisory opinions granted to the Attorney General in § 22 of Article IV of the Texas Constitution and § 402.041, *et seq.* of the Texas Government Code, this letter is being submitted to you to request an opinion regarding whether a water control and improvement district has the power and authority to regulate illegal dumping under provisions of the Chapter 365 of the Texas Health and Safety Code and whether it can regulate weed control under certain provisions of the Water Code.

**BACKGROUND LAW AND FACTS**

The Victoria County Water Control and Improvement District No. 1 ("VCWCID No. 1" or "District") is located in Victoria County, Texas and is comprised of territory in Bloomington, Texas, an unincorporated community. The District has the powers and duties provided by the general laws of this state, including Chapters 49 and 51, Texas Water Code, applicable to water control and improvement districts ("WCID") created under Section 59, Article XVI of the Texas Constitution.

The District has been approached by residents to assist through its police powers with an ordinance to regulate weeds and illegal dumping on a number of overgrown lots (alleged 100+ abandoned private properties) in Bloomington based on health and safety reasons. The residents assert that the use of police power would be appropriate because: (1) property overgrown with weeds creates a breeding ground for rodents and other pests that can carry and transmit diseases that, through runoff, can find its way into the water supply; and (2) similarly, illegal dumping can contaminate the local water supply.

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## DISCUSSION

A water district only has such authority and powers as “may be conferred by law.” TEX. CONST. art. XVI, § 59(b). That means that a water district’s powers is limited by the terms of applicable statutes authorizing its creation, and it can exercise no authority that the Legislature has not clearly granted.

It appears that the authority discussed below provides a WCID explicit and/or implied power to regulate illegal dumping and overgrown weeds.

Texas Water Code § 51.121 sets forth the duties of powers of a WCID including, among other things, “to provide for the protection, preservation, and restoration of the purity and sanitary condition of water in the state” and “the preservation and conservation of all natural resources of the state.” TEX. WATER CODE § 51.121 (b)(6) & (7). Subsection (c) of § 51.121 also provides that the purposes of a district may be accomplished through any practical means. TEX. WATER CODE § 51.127 states that a district may adopt rules and regulations to “preserve the sanitary condition of all water controlled by a district.” More specifically, § 51.331 provides that a district may include in its purposes and plans, among other things, all improvements, facilities, plants, equipment, and appliances incident to or helpful or necessary to the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether fluids, solids, or composites. TEX. WATER CODE § 51.331(a). The District is permitted to use any mechanical or chemical means or processes incident, necessary, or helpful to accomplish these purposes, and to conserve and promote the public health and welfare. TEX. WATER CODE § 51.331 (b).

Additionally, Chapter 49 of the Texas Water, applicable to all water districts, provides that, “a district shall have the functions, powers, authority, rights, and duties that will permit accomplishment of the purposes for which it was created or the purposes authorized by the constitution, this code or any other law.” TEX. WATER CODE § 49.211(a).

Moreover, Texas Health and Safety Code § 365.012 provides criminal penalties for illegal dumping and a WCID may contract or employ its own peace officers to make arrests to prevent or abate the commission of any offense against the laws of the state and the rules of a district. *See* TEX. WATER CODE § 49.215(a).

It should be pointed out, however, that in the case of weed control, Chapter 342 of the Texas Health and Safety Code provides that municipalities can specifically regulate weeds, brush and other unsanitary matters. *See* TEX. HEALTH AND SAFETY CODE §§ 342.004 and 342.008. There is no applicable statute for weed control for water control and improvement districts.

The Honorable Gregg Abbott

January 25, 2013

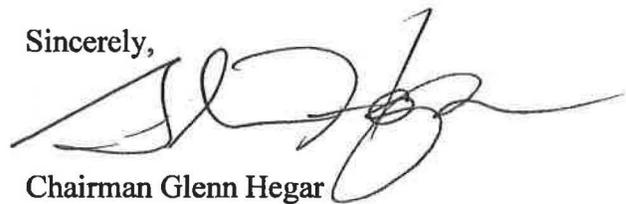
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**QUESTION PRESENTED**

- (1) Does a WCID have explicit and/or implied authority to control weeds under Chapters 49 or 51 of the Texas Water Code?
- (2) Does a WCID have explicit and/or implied authority to regulate illegal dumping under Chapters 49 and 51 of the Texas Water Code and Texas Health and Safety Code § 365.012?

Thank you for your attention to this matter. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Hegar", with a long horizontal flourish extending to the right.

Chairman Glenn Hegar  
Texas State Senate