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OPINION COMMITTEE

FILE # ML-45331-07

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AUGUST 24, 2007

THE HONORABLE GREG ABBOTT
ATTORNEY GENERAL OF TEXAS
ATTN: OPINION COMMITTEE
PO BOX 12548
AUSTIN, TEXAS 78711-2548

RQ-0615-GA

RE: Authority of a County to fund the operation and maintenance of a Water District

Dear Attorney General Abbott:

A question has arisen in Mills County as to whether or not the county has the authority to budget funds from its general revenue to fund the Fox Crossing Water District. The Mills County Commissioners Court has budgeted funds for the Fox Crossing Water District since the District's inception in 1985. A confirmation election was held but the voters only approved joining the district. There has never been another election to decide whether the District can tax. It has become apparent that the county has been and still is the sole source of funding for the Fox Crossing Water District. The legal authority is unclear as to whether one taxing authority, the County, can be a source of funding, possibly the sole source of funding, for another entity that also has taxing authority, the Fox Crossing Water District. Mills County requests an opinion on whether this is a legal funding arrangement. We are concerned that the County may be circumventing the wishes of the voters by providing County General Fund tax dollars to fund the District. Attached to this letter you will find details of the factual situation, an overview of the relevant law addressing this matter, and reference to a similar Attorney General Opinion.

Sincerely yours,



Keri Roberts
Mills County Attorney

FOX CROSSING WATER DISTRICT

During the 69th legislative session, the legislature enacted House Bill 2487 creating the Fox Crossing Water District (the "District") under article XVI, section 59 of the Texas Constitution. Mills County (the "County") is located within the boundaries of the District, and a majority of the County voters confirmed the District's creation. As indicated in article XVI, section 59 (b) of the Texas Constitution, the District shall be a governmental agency and body politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning their subject matter as may be conferred by law. Furthermore, under (c), there is discussion that maintenance of the District may be by bonds and taxes.

Various sections of House Bill 2487 discuss financing the operation of the District. Section 30 states the District may apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source to carry out any purpose or power granted under the Act. Section 59 reads that the District may pay all costs and expenses necessarily incurred in the operation of the District from money obtained from the sale of bonds issued by the District or out of taxes, fees, or other revenues of the District. I would also note that Section 60 authorizes the District to borrow money, while sections 61 through 72 discuss the District issuing bonds, and sections 73 through 76 relate to the authority to levy taxes.

Under Section 36.201(b) of the Water Code, it specifically states that the Board of Directors for the District may annually levy taxes to pay the maintenance and operating expenses of the District. Other sections in Chapter 36 of the Water Code reiterate the above discussions of issuing bonds and levying taxes.

FUNDING BY MILLS COUNTY

The District has annually submitted a budget to the Mills County Commissioners Court. The budget covers expenses for the operation and maintenance of the District. The Commissioners Court has viewed the expenditure to be for a public purpose and has yearly granted funds to the Fox Crossing Water District. It is apparent that the County has become not only a source, but the sole source of funding, for the District since the District does not levy a tax, issue bonds, or collect fees.

SIMILAR ATTORNEY GENERAL OPINION

Attorney General Opinion JC-0444 found that a County is not authorized to pay for a confirmation election for a water district and may not make a donation or grant to the District for that purpose. The opinion did not reach any of the constitutional issues raised (violation of article III, section 52 and article V, section 18 of the Texas Constitution) because the opinion found that the legislature contemplated that a water district would pay for its own organizational expenses. In AG Opinion JC-0444, the county was inquiring as to whether the county could grant money labeled for a specific purpose, the confirmation election. Our situation does not limit or specify a particular purpose for the funding, as the County's financial support has been used for any and all operation and maintenance needs of the District.

FUNDING ARRANGEMENT BETWEEN THE COUNTY AND THE DISTRICT

The legislature granted the authority to the District to collect fees, levy a tax, and issue bonds. Under Section 36.201(b) of the Water Code, it specifically states that the Board of Directors for the District may annually levy taxes to pay the maintenance and operating expenses of the District. Section 59 of House Bill 2487 reads that the District may pay all costs and expenses necessarily incurred in the operation of the District from money obtained from the sale of bonds issued by the District or out of taxes, fees, or other revenues of the District. Section 30 of House Bill 2487 states the District may apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source to carry out any purpose or power granted under the Act. Since the District does not levy a tax, issue bonds, or collect fees, they obtain their funding from "other revenues". The County apparently is being used as their "other revenue." Is obtaining 100% of their operating and maintenance expense solely from "other revenue" in compliance with what the legislature intended? If yes, may the County budget funds from its general revenue to fund the District if the Commissioners Court finds the expenditure to be for a public purpose under article III, section 52 of the Texas Constitution? And if so, would such an expenditure be consistent with article V, section 18 of the Texas Constitution?