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OPINION COMMITTEE



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RQ-0423-GA

December 12, 2005

FILE # ML-44525-05

I.D. # 44525

The Honorable Greg Abbott
Attorney General
P.O. Box 12548
Austin, TX 78711-2548

RE: Whether specific provisions of the 1959 Collin County Watershed Workplan Agreements requiring the county to fund maintenance of watershed property comply with Article XI, Section 7 of the Texas Constitution and related questions.

Dear Attorney General Abbott,

Representative Laubenberg has received the attached correspondence from her constituents, Marvin and Renetta Wilson of Celina. Pursuant to a request from Representative Laubenberg, I respectfully request an opinion from you regarding the constitutionality of the 1959 contract between the Collin County Soil Conservation District and the Collin County Commissioners Court as it relates to Little Elm 18A Dam in Collin county.

Background

On April 8, 1959 Collin County Soil Conservation District and the Collin County Commissioners Court entered agreements with the U.S. Department of Agriculture Soil Conservation Service regarding the construction and maintenance of some 98 dams in the Trinity River Watershed in Collin County. Among these was a dam known as Little Elm 18A, which is presently situated on the property of Mr. and Mrs. Wilson in Collin County.

Little Elm 18A is alleged to be in disrepair and in need of maintenance; however the Collin County Commissioners Court has taken the position that it is not obligated to fund the cost of repairs to the dam because the original 1959 agreement violates Article XI, Section 7 of the Texas Constitution. Collin County is concerned that the agreements are void *ab initio* because they result in the incurrence of a public debt without provisions for collection of taxes to provide

for the upkeep of the dam. The Wilsons claim that the contract is valid and that the County is therefore required to repair the dam.

More information is provided in the attached correspondence from Congressman Ralph Hall, dated July 25, 2005.

Contract Provisions in Question

Whether Collin County is presently obligated to fund the maintenance and repair of Little Elm 18A turns on constitutional validity of two provisions in the attached *Watershed Work Plan Agreement* and the *Watershed Protection Operation and Maintenance Agreement*.

- Watershed Work Plan Agreement, paragraph 7 states:

"The District and the County will be responsible for the operation and maintenance of the structural works of improvement by actually performing the work or arranging for such work in accordance with an Operation and Maintenance Agreement which is to be entered into."

- Watershed Protection Operation and Maintenance Agreement, paragraph II.C.4 states:

"When all Works of Improvement have been completed, it is estimated that the annual cost of operation and maintaining the Works of Improvement herein described will be \$100 per structure based on present construction costs.

The County has the necessary funds on hand for the operation and maintenance of the Works of Improvements.

Additional funds will be obtained from the F.M. road and Soil Conservation Fund supplied by annual property taxation.

Funds annually needed for this maintenance job will be set up in accordance with the needs as indicated by the joint annual or special inspections as provided in Section II B-I above."

Questions

- Do the contract provisions referenced above violate Article XI, Section 7 of the Texas Constitution?
- If the contract is void *ab initio*, then what is Collin County's obligation with regard to the maintenance and operation of Little Elm 18A? Is the Collin County Commissioners Court at liberty to make a determination with regard to whether funds are available for this purpose?

- If the agreements are constitutionally valid, is the Collin County Commissioners Court obligated to operate and maintain the dams under the agreements in perpetuity?

On behalf of Representative Laubenberg, I thank you for your consideration of this request. Please feel free to contact my office or Representative Laubenberg's office if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Puente". The signature is written in a cursive style with a large initial "R" and "P".

Robert R. Puente

cc. Rep. Laubenberg