

**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN**  
ATTORNEY GENERAL

**AUSTIN, TEXAS 78711**

March 5, 1970

Honorable J. R. Singleton  
Executive Director  
Texas Parks & Wildlife Commission  
John H. Reagan Building  
Austin, Texas 78701

Opinion No. M-591

Re: Trinity River  
Authority must pay  
the Parks and Wild-  
life Commission for  
stream bed materials.

Dear Mr. Singleton:

You have requested our opinion as to whether your agency must charge and collect money from the Trinity River Authority of Texas, a governmental agency created by the Legislature, for sand, gravel and other materials which such agency has removed from the stream bed of the Trinity River in connection with construction of a project known as the "Livingston Dam" in Polk and San Jacinto Counties, Texas. Your file reflects that the established price under the applicable statutes is ten cents per cubic yard, and that the material removed by Trinity River Authority totals 127,908 cubic yards of such sand, gravel and other materials for an aggregate monetary amount of \$12,790.80.

Attorney General Opinion WW-150 (1959) held that a navigation district could dredge without a permit if the dredging is incidental to navigation. Prior to 1911, the public was generally free without control or supervision to remove mudshell, sand, and gravel from the bottoms underlying public waters of Texas. Goar v. City of Rosenberg, 115 S.W. 653 (Tex.Civ.App. 1909, no writ); and see Opinion WW-151 (1957). The power of the Parks and Wildlife Commission to make a charge for removal of such materials from the stream bed is contained in two statutes, to-wit:

Section 1, of Articles 4053, as amended, and 4053d, Vernon's Civil Statutes, which read as follows:

"Article 4053.

SECTION 1. Anyone desiring to purchase any of the marl and sand of commercial value and any of the gravel, shells or mudshell included within the provisions of this Chapter, or otherwise operate in any of the waters or upon any island, reef, bar, lake, bay, river, creek or bayou included in this Chapter shall first make written application therefor to the Parks and Wildlife Commission, designating the limits of the territory in which such person desires to operate. If the Parks and Wildlife Commission finds that the taking, carrying away or disturbing of the marl, gravel, sand, shells or mudshell in the designated territory would not damage or injuriously affect any oysters, oyster beds, fish inhabiting waters thereof or adjacent thereto or that such operation would not damage or injuriously affect any island, reef, bar, channel, river, creek or bayou used for frequent or occasional navigation, or change or otherwise injuriously affect any current that would affect navigation, it may issue a permit to such person after such applicant shall have complied with all requirements prescribed by said Parks and Wildlife Commission. The permit shall authorize the applicant to take, carry away or otherwise operate within the limits of such territory as may be designated therein, and for such substance or purpose only as may be named in the permit and upon the terms and conditions of the permit. No permit shall be assignable, and a failure or refusal of the holder to comply with the terms and conditions of such permit shall operate

as an immediate termination and revocation of all rights conferred therein or claimed thereunder. No special privilege or exclusive right shall be granted to any person, association of persons, corporate or otherwise, to take or carry away any of such products from any territory or to otherwise operate in or upon any island, reef, bay, lake, river, creek, or bayou included in this Chapter. (Emphasis added.)

\* \* \* \* \*

Article 4053d.

The Game, Fish and Oyster Commissioner by and with the approval of the Governor, may sell the marl, gravel, sand, shell or mudshell included within this Act upon such terms and conditions as he may deem proper; but for not less than four (4¢) cents per ton, and payment therefor shall be made to said Commissioner. The proceeds arising from such sale shall be transmitted to the State Treasurer and be credited to a special fund hereby created to be known as the sand, gravel and shell fund of the State, and may be expended by the said Commissioner in the enforcement of the provisions of the sand, shell and gravel laws and in the establishment and maintenance of fish hatcheries, when provided by legislative appropriation, and in payment of refunds provided for in Section 7, Chapter 161, of the General Laws of the Regular Session of the Thirty-eighth Legislature, to counties, cities or towns or any political subdivision of a county, city, or town, as provided for in Section 7, Chapter 161, of the General Laws of the Regular Session of the Thirty-eighth Legislature. And also providing that the authorization of refunds on sand,

gravel and shell shall be extended to include refunds to the State Highway Commission of money paid the State through the Game, Fish and Oyster Commission for sand, gravel and shell used by the State Highway Commission on public roads upon application for such refunds in the manner prescribed for cities and Counties. Provided further that not less than seventy-five per cent of the proceeds derived therefrom, after refunds above referred to have been cared for, shall go for the establishment and maintenance of fish hatcheries; and the sand, gravel, and shell fund is hereby appropriated for the purpose of carrying out the provisions of this Act. Said hatcheries to be established from time to time in the State of Texas by the Fish, Game and Oyster Commission, when in their judgment a suitable location is secured and arrangements therefor have been completed. (Emphasis added.)

Article 4054, Vernon's Civil Statutes, allows cities and counties to receive a permit for removal of these materials without charge. In Attorney General Opinion No. WW-759 (1959), it was held that the provisions of 4053d, providing for monetary refund of such moneys paid to the Parks and Wildlife Commission by the State Highway Commission, could be legally refunded; consequently, this necessarily meant that the payment for the materials had to be made in the first instance.

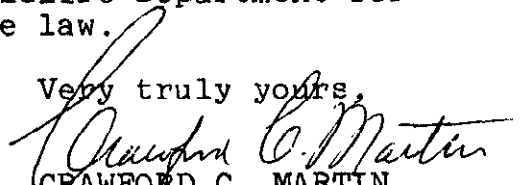
The language in Article 4053 also states that "anyone" desiring to purchase any of the marl and sand of commercial value shall first make written application therefor to the Parks and Wildlife Commission. This statute, being enacted for the public good, is susceptible to a construction that state entities are bound thereby although not expressly named. 49 Am. Jur. 236, States, etc., Sec. 14. The broad language of the above statute, its requirement that cities

and counties and their political subdivisions obtain a permit "without charge", and the specific wording as to refunds for the State Highway Commission (Article 4053d) conclusively evidence a legislative intent that all entities not exempted from payment or permit provisions must pay for sand and gravel. 53 Tex. Jur.2d 232-234, Statutes, Sec. 161. Construing these statutes in pari materia, we have thereby reached the conclusion that all governmental agencies not exempted from payment, as is the case with Trinity River Authority, are subject to the permit and cost provisions of the statute and therefore must pay for the gravel, etc., moved from a stream bed. Under the provisions of Article 4053d, the proceeds from such sales of gravel and other designated materials to Trinity River Authority should be credited to the Special Game and Fish Fund No. 9 for use therefrom in accordance with the law.

S U M M A R Y

Trinity River Authority is required to pay the Parks and Wildlife Commission or Department for removal of marl and sand of commercial value and of any of the gravel, shell or mudshells from Texas streams in accordance with Articles 4053 and 4053d, V.C.S. Such moneys should then be credited to the Special Game and Fish Fund No. 9 of the Parks and Wildlife Department for use in accordance with the law.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Roger Tyler  
Assistant Attorney General

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