



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 21, 1988

Honorable Jim Mapel  
Criminal District Attorney  
Brazoria County  
Courthouse 400 North Velasco  
Angleton, Texas 77515

LO-88-86

Dear Mr. Mapel:

You ask:

Does the [Brazoria County Conservation and Reclamation District No. 3] or does [Brazoria] County have the obligation and duty to maintain bridges built by the District over natural watercourses utilized by the District as part of its drainage and reclamation system when the natural watercourses existed within the District's boundaries prior to formation of the District and prior to establishment of County roads adjoining such bridges.

The Brazoria County Conservation and Reclamation District No. 3 [the "district"] was first created by order of the Brazoria County Commissioners Court, January 20, 1920, as recorded in Book 1, page 564, of the county commissioners court records. The district was created under the name Brazoria County Drainage District No. 3, by authority of Tex. Const. art. III, section 52.

The district was converted, without change of name, to a conservation and reclamation district operating under the authority of Tex. Const. art. XVI, section 59, by Acts 1929, 41st Leg., 1st C.S., ch. 6, which provided in section 7 that the district

shall have and exercise and is hereby vested with all the rights, powers and privileges, and duties of a drainage district, organized under the provisions of and conferred by the

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General Laws of this State, now in force or to be hereafter enacted, upon drainage districts created under the authority of Section 59 of Article 16, of the Constitution . . . .

In 1969 the district was recreated and reestablished with change of name to Brazoria County Conservation and Reclamation District No. 3. Acts 1969, 61st Leg., ch. 307. We find no reference in the 1969 act to the district's having powers of a general law district which would be relevant to the issue you present.

A 1979 enactment made provisions regarding compensation of the district's commissioners not relevant to the issue you present. Acts 1979, 66th Leg., ch. 420.

In 1981 the district was recreated and reorganized without change of name. Acts 1981, 67th Leg., ch. 98. We find no reference in that act to the district's having any powers of a general law district relevant to the issue you present.

Finally, a 1981 enactment providing for the creation of Brazoria County Watershed Drainage Districts Nos. 3, 4, and 5 states that the Brazoria County Conservation District No. 3 is "to be dissolved on creation of the watershed drainage districts under this Act . . . ." Acts 1981, 67th Leg., 1st C.S., ch. 8, § 56(d). We assume, in the following discussion, that the district has not in fact been dissolved but is still in lawful operation. See *id.*, § 4(a) (confirmation election); 4(h) (Act expires if district is not created within five years after its adoption).

The briefs submitted in connection with your request both assume that the district is subject to Water Code section 56.121. Chapter 56 of the Water Code, of which section 56.121 is a part, applies to general law drainage districts. It is not clear to us, however, that the district is subject to section 56.121. While the 1929 recreating act provided that the district have the powers and duties of a general law drainage district, the 1969 recreating act, which granted additional powers to the district -- i.e. "to facilitate the navigation of inland and coastal waters," section 5(a) -- did not carry forward the reference to general law drainage district powers contained in the 1929 act. Moreover, the 1981 recreating act did not specifically carry forward the provisions of the 1969 recreating act, but provided rather in section 4 that

[t]he district shall be considered to be organized and existing for the reclamation and drainage of its overflowed lands and other lands needing drainage, and the navigation of inland and coastal waters within the district or adjacent thereto. The rights, powers, privileges, authority and functions herein granted to the district shall be subject to the continuing right of supervision of the state, to be exercised by and through the Texas Department of Water Resources. . . .

On the other hand, whatever doubts there may be as to the continuing legal effect of the above-referenced provisions, we reach the same conclusion in answer to your question. Our conclusion follows that reached by the court in Hidalgo County Water Control and Improvement Dist. No. 1 v. Hidalgo County, 134 S.W.2d 464 (Tex. Civ. App. - San Antonio 1939, writ ref'd). There the court resolved an apparent conflict between the provisions of what is now V.T.C.S. article 2351 and what is now Water Code section 51.133 (formerly V.T.C.S. art. 7880-123).

Article 2351 provides:

Each commissioners court shall:

. . . .

3. Build bridges and keep them in repair.

Water Code section 51.133 provides:

The district shall build necessary bridges and culverts across and over district canals, laterals, and ditches<sup>1</sup> which cross county or public roads. Funds of the district shall be used to construct the bridges and culverts.

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1. Article 7880-123, the version of this provision considered in Hidalgo, included the words "made and constructed by the district" after "ditches."

The Hidalgo court concluded:

[W]e hold . . . that the burden of building bridges over its canals at intersections with county roads is upon the district only in cases where such canals were dug across roads already laid out and opened to public use so as to constitute the canal an obstruction of an existing road . . .

[I]t was the intention of the legislature . . . to require appellant and similar districts to restore county roads to the same condition of safety in which the districts find and cross them; to relieve the county of any expense made necessary by the intrusion of the district upon its prior easement. Because of the very nature of said intrusion -- a sort of legal trespass -- the statute by express language put the duty upon the district to restore the status quo ante, and by implication, to maintain that status so long as the district obstructs the free use of the county's prior easement.

Id., at 468.

On the question of whether the requirement that an entity build bridges includes by implication "the duty and obligation" that it maintain them, the court held in the affirmative.

It has been held that an authority given a governmental agency to expend funds to 'build' a public improvement carries with it, by necessary implication, the further authority in that agency to use such funds to repair and maintain the completed improvement. Bell County v. Lightfoot, 104 Tex. 346, 138 S.W. 381.

Id. at 468.

Again, both the county and district in their briefs in this matter assert that Water Code section 56.121 applies to the district. That section, which by the terms of chapter 56 of the Water Code applies to general law drainage districts (see section 56.001), provides:

The board shall build necessary bridges and culverts across or over canals, drains, ditches, laterals, and levees which cross a county or public road and shall pay for the construction with funds of the district.

The provisions of section 56.121 are quite similar to the provisions of section 51.133, quoted above, which were construed in Hidalgo. If we assume with the county and district that section 56.121 applies to the district here, we would conclude following Hidalgo that the district's obligation to build and maintain bridges arises only when the district as part of its operations constructs or alters a watercourse, thereby obstructing or requiring alteration of a pre-existing county road.

One of the road crossings ("No. 6") considered in Hidalgo presented a similar situation to that under consideration here:

Since the construction of the District main canal the County has opened two other roads (Nos. 6 and 7) to cross said canal. When the road at crossing 6 was established the District caused a bridge to be put in, but in later years when the bridge fell into decay and the District refused to repair or replace it, the County built a new one in its place at a cost of \$970. The District refused to repair or maintain this bridge, or reimburse the County for the cost of its construction.

Id., at 465.

The county sued for reimbursement of the expenses it incurred in rebuilding the bridge at crossing number 6, and for mandamus compelling the district to thereafter maintain the bridge. The trial court granted the county the relief prayed for, but on appeal the Hidalgo court reversed the district court judgment with regard to the bridge at crossing number 6 and rendered judgment that the county should take nothing with regard to crossing no. 6 and that the writ of mandamus be denied. 113 S.W.2d at 469.

The situation here is that the county roads in question were built after the district had begun its exploitation of the "natural watercourses" which the county roads subsequently crossed. We assume, from the facts presented, that no later alterations were made to the "natural watercourses"

by the district, necessitating alteration in the county roads crossing them. Therefore, following Hidalgo's rationale that the district's duty to build and maintain bridges arises only when it creates or alters watercourses thereby causing an obstruction to pre-existing county roads, we conclude that the district has no duty to build or maintain the bridges which are the subject of this opinion request.

We find inapposite the county's argument in its brief attempting to distinguish the "natural watercourses" here from the "canals, drains, ditches, laterals and levies," referred to in section 56.121 or the "canals, laterals, and ditches" referred to in section 51.133, which had been under consideration in Hidalgo. We believe that in light of Hidalgo those sections should be read as providing that the district's duty to build and maintain bridges arises only when the district builds or alters a water course such that alteration to a pre-existing county road crossing the water-course is necessitated.

Even if section 56.121 does not apply to the district here we think consideration of section 50.052 of the Water Code leads to the same result. Chapter 50 of the Water Code applies generally to any district created by authority of article III, section 52, or article XVI, section 59, of the constitution, and thus applies to the district here. Section 50.001. Section 50.052 provides in subsection (a):

If any district or authority organized under the provisions of Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, in the exercise of the power of eminent domain, the police power, or any other power requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any highway, railroad, electric transmission, telegraph, or telephone lines, conduits, poles, properties, facilities, or pipelines, the relocation, raising, lowering, rerouting, or change in grade or alteration of construction shall be done at the sole expense of the district or authority.

Subsection (a) we think indicates that the district's duty to build or maintain a bridge arises only when the bridge is necessitated by acts of the district requiring "relocation, raising, lowering, rerouting, or change in

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grade or alteration in the construction" of a pre-existing roadway.<sup>2</sup>

We believe, therefore, that whether or not section 56.121 of the Water Code currently applies to the district, the provisions of section 50.052, which clearly apply to the district, support the conclusion that the district has a duty to build or maintain bridges over natural watercourses only where the district had taken action regarding such waterways, necessitating alteration of pre-existing county roads crossed by such water courses. The duty to maintain the bridges about which you ask therefore lies upon the county, pursuant to the provisions of V.T.C.S. article 2351, quoted above in the discussion of Hidalgo.

Very truly yours,



Rick Gilpin, Chairman  
Opinion Committee

APPROVED: Opinion Committee

RG/WW/bc

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ID# 3280

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2. Also, it may be noted that the provisions of section 50.052 are substantially the same as those of section 12 of the 1969 act recreating and renaming the district. Acts 1969, 61st Leg., ch. 307, section 12. The provisions of section 12 were not, however, specifically carried over when the district was recreated in 1981.