



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 11, 1955

Hon. Dorsey B. Hardeman, Chairman
Senate State Affairs Committee
Senate Chamber
Austin, Texas

Letter Opinion No. MS-194

Re: Constitutionality of
S.B. No. 389, 54th
Legislature, creating
the Reagan County Water
Supply District.

Dear Senator Hardeman:

The request for an opinion by the Senate State Affairs Committee is whether Senate Bill 389, as introduced, is constitutional in the light of the requirements of Article 3, Section 57, of the Constitution of Texas.

That provision of the Constitution reads as follows:

"No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature, before such act shall be passed."

Senate Bill 389 provides for the creation of the Reagan County Water Supply District under the provisions of Article 16, Section 59, of the Constitution of Texas, provides that the district shall have boundaries co-extensive with the boundaries of Reagan County, and vests in the district all of the rights, powers and privileges now or hereafter given to water control and improvement districts created under the aforesaid constitutional provision.

The leading case pointing out the distinction between local and general laws is Whitehead v. Granbury Independent School District, 45 S.W.2d 421 (Tex.Civ.App., 1931) where the court said: "Where the public at large have an interest in the matter, and the legislation merely applies to a locality, but

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affects all who live in said locality, or whose interest may be drawn into same, the law is a general law and not a special one." In that case, the court held that publication and exhibition of the notice was not required. Additional support of that definition can be found in Chappell v. State, 219 S.W.2d 88 (Tex. Crim., 1949) and Lower Colorado River Authority v. McCraw, 125 Tex. 268, 83 S.W.2d 629 (1935). In Lower Colorado River Authority v. McCraw, supra, the court discussed the statute authorizing the creation of the district and stated that a statute is not local and special even though confined to a limited area "if persons or things throughout the State are affected thereby, or if it operates upon a subject that the people at large are interested in. Stephenson v. Wood, 119 Tex. 564, 34 S.W.2d 246." To the same effect is Lower Neches Valley Authority v. Mann, 140 Tex. 294, 167 S.W.2d 1011 (1943). In each case, a district having the same constitutional powers as those authorized under the provisions of S.B. 389 was upheld as a general law.

The Attorney General is of the opinion that S.B. 389, though applicable to only one county, is not a local and special law under the provisions of Article 3, Section 57, of the Constitution of Texas. Bexar County v. Tynan, 128 Tex. 223, 97 S.W.2d 467 (1936) involved a case where the Legislature had sought by population bracket to restrict the application of a law to one county. Such was done in contravention of Article 3, Section 56 (regulating the affairs of a county). See also Altgelt v. Gutzeit, 109 Tex. 123, 201 S.W. 400.

As pointed out in the above cases, the courts do not single out a single circumstance or provision, but must also consider the entire act, the surrounding circumstances, reasons for passage and purposes to be accomplished, Handy v. Johnson, 51 Fed. 2d 809 (U.S.D.C., Tex., 1931), and have upheld acts of the Legislature where the initial benefit was for the people within the limits of only one city, but where the State also had a direct and vital interest. City of Aransas Pass v. Keeling, 112 Tex. 339, 247 S.W. 818 (1923). It appears that S.B. 389 creates a district as "basically a public enterprise . . . for the general governmental purpose of effectuating the objects of the conservation amendment" and it is of interest to all of the people of the State of Texas. Brazos River Conservation and Reclamation District v. McCraw, 126 Tex. 506, 91 S.W.2d 665 (1936).

Accordingly, you are advised that S.B. 389 is a general law and the notice required by Article 3, Section 57, of the

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Constitution of Texas, and statutes enacted pursuant thereto, is not required to be published nor exhibited prior to introduction or passage of the proposed Act.

Very truly yours,

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