

State Soil Conservation Board meeting, July 24th, 1939

The State Soil Conservation Board met in regular session, July 24th, through the morning of the 25th. Minutes of all previous meetings were read, and approved.

39 petitions for Soil Conservation districts were considered as follows:

District No. 1:

Application 101

District No. 2:

Applications 201, 202, 203, and 204.

District No. 3:

Applications 301, 302, 303, 304, 305,

District No. 4:

Applications 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, and 418.

District No. 5:

Applications 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, and 511.

After a full discussion of the subject, the following schedule for public hearings was adopted:

SCHEDULE OF HEARINGS TO BE CONDUCTED BY THE FULL STATE BOARD

MONDAY AUGUST 14th

District No.	PLACE OF HEARING	Time
304	Kyle	10:00 A. M.
304	Lockhart	2:00 P. M.
305	Hallettsville	8:00 P. M.

TUESDAY AUGUST 15th

409	Madisonville	10:00 A. M.
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DISTRICT NO.	PLACE OF HEARING	TIME
401	Nacogdoches	3:00 P. M.
407	Wills Point	8:00 P. M.

WEDNESDAY AUGUST 16th

510	Denton	10:00 A. M.
510	Gainesville	2:00 P. M.
507	Bridgeport	2:00 P. M.
511	Vernon	8:00 P. M.

THURSDAY AUGUST 17th

101	Spur	10:00 A. M.
203	Big Spring	8:00 P. M.

FRIDAY AUGUST 18th

204	Miles	10:00 A. M.
201	Eden	2:00 P. M.
202	Salt Gap	8:00 P. M.

Saturday August 19th

503	Brownwood	
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HEARING HELD BY MR. W. G. KENNEDY.

SATURDAY AUGUST 26th

102	Littlefield	10:00 A. M.
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SCHEDULE OF HEARINGS FOR W. W. CARDWELL, DISTRICT NUMBER THREE

WEDNESDAY AUGUST 23rd

302	Beeville	2:00 P. M.
302	Kenedy	8:00 P. M.

THURSDAY AUGUST 24th

301	Floresville	2:00 P. M.
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TUESDAY AUGUST 29th

DISTRICT NO.	PLACE OF HEARING	TIME
303 - 05	Schulenburg	8:00 P. M.

SCHEDULE OF HEARINGS BY MR. J. P. MARTIN DISTRICT NUMBER FOUR

TUESDAY AUGUST 22nd

403 - 04	Crockett	8:00 p.m.
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WEDNESDAY AUGUST 23rd

411	Colmesneil	10:00 A. M.
410 and 413	San Augustine	3:00 P. M.

THURSDAY AUGUST 24th

414	Carthage	10:00 A.M.
412	Marshall	2:00 P. M.
416	Hughes Springs	3:00 P. M.

FRIDAY AUGUST 25th

408	New Boston	10:00 A. M.
415	Paris	3:00 P. M.

SATURDAY AUGUST 26th

402, 405, 418	Sulphur Springs	10:00 A. M.
406 and 417	Longview	8:00 P. M.

SCHEDULE OF HEARINGS BY V. C. MARSHALL, DISTRICT NUMBER FIVE

TUESDAY AUGUST 22nd

505	McKinney	10:00 A. M.
504	Waxahachie	2:00 P. M.

WEDNESDAY AUGUST 23rd

502	Dublin	10:00 A. M.
506	Gatesville	3:00 p. M.
512	Waco	8:00 P. M.

THURSDAY AUGUST 24th

501	Groesbeck	10:00 A. M.
509	Temple	3:00 P. M.
508	Bartlett	8:00 P. M.

FURTHER HEARINGS BY FRANK BUCKLEY, DISTRICTS NUMBERS TWO AND FIVE

THURSDAY AUGUST 31st

DISTRICT NO	PLACE OF HEARING	TIME
507	Bridgeport	

FRIDAY SEPTEMBER 1st

503	Brownwood	
204	Ballinger	8:00 P. M.

SATURDAY SEPTEMBER 2nd

201-02	Eden	10:00 A. M.
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FURTHER DATES FOR HEARINGS SET BUT NOT YET HEARD:

NAME OF PROPOSED DISTRICT	PLACE OF HEARING	DATE	TIME	COUNTIES INVOLVED
Sulphur Cypress (419)	Mt. Pleasant	Sept. 29	2 pm	Titus, Camp, Franklin and Morris
Lower Caddo (420)	Linden	Sept. 29	8:pm	Marion, Cass, Harrison and Morris
South Anderson (421)	Palestine	Sept. 30	2 pm	Henderson, Anderson, and Houston
Central Colorado (517)	Coleman	Oct. 3	2 pm	Coleman, Taylor, and Runnels
Middle Clear Fork (206)	Abilene	Oct. 3	8 pm	Jones, Taylor, Shackelford, Nolan Callahan
California Creek (515)	Stamford	Oct. 4	2 pm	Fisher, Haskell, Jones Shackelford, Throckmorton
Floyd County (104)	Floydada	Oct. 5	2 pm	Floyd
Dawson-Lynn Counties (103)	Tahoka	Oct. 5	8 pm	Dawson and Lynn
Dawson-Lynn Counties (103)	Lamesa	October 6	10 am	Dawson and Lynn
El Paso-Hudspeth (205)	Fadens	Oct. 7	2 pm	El Paso and Hudspeth

Mr. Walser of the Soil Conservation Service, and Mr. Hohn of the Extension Service, very generously agreed to provide transportation for the State Board Members in attending hearings as scheduled for the full Board. Mr. Buckley was instructed to visit scheduled points for public hearings, and complete arrangements for hearings by securing suitable meeting places, and the services of stenotype stenographers to properly record proceedings of each hearing.

The Chairman was instructed to give notice of hearings scheduled, and to be scheduled, according to law; to notify county agents, and other interested parties and complete arrangements as far as possible for hearings.

Questions submitted to the Attorney General's Department for an opinion have been received in opinions No. O-906 and O-1204, and are hereby made a part of these minutes.


Being no further business, the Board adjourned subject to call.

Members Present:

Mr. Wm. G. Kennedy,
Mr. H. K. Fawcett,
Mr. Walter W. Cardwell,
Mr. J. P. Martin
Mr. V. C. Marshall.


Chairman of the Board

Approved Sept. 21-1939


Secretary.

The emergency appropriation of \$10,000.00 was made available July 12th 1939. Mr. Bryant assumed his responsibilities on July 11th, and on the 13th the first voucher for postage stamps in the amount of \$25.00 was presented for payment and warrant no. 215487, covering same, received on July 24th.

Since that date, and through August 31st, 1939, at the close of the State Fiscal year, a total of 306 vouchers have been presented, representing a total expenditure of \$9,084.27. The balance of the \$10,000.00 appropriation in the amount of \$915.73, has been obligated and vouchers have been prepared awaiting only the payment of Board members for services rendered, before being sent to the Comptroller and Treasurer.

Of the first 306 vouchers presented, two have been returned for correction. One because the county delegate requested reimbursement for a tire and tube that he had ruined en route to district convention at Ft. Stockton, and which the comptroller refused to pay because of allowance of five cents per mile for mileage, and in the second case, because the county delegate only certified to a total expenditure of meals and hotel expenses and failed to give an itemized account.

To date all county delegates have been paid in district one, two, four and five, and only one county delegate in State District three has failed to send in his account.

In the department files and accounts are recorded all receipts and disbursements of State Warrants paid the county delegates and from counties not represented over the state at the five district conventions, letters from either the county Judge or county agent acknowledging this fact.

Upon the advise of the Comptroller, the State Treasurer, and the Attorney General, the chairman has signed and approved all vouchers, and although no money is being handled, and the State office is charged with only the responsibility of presenting vouchers for approval and for the delivery of warrants to those entitled to payment, the chairman has seen fit to execute a surety bond in the sum of \$2,000.00, payable to the State Soil Conservation Board, as their protection against any loss that might occur in handling the affairs of the office. The official bond no. 688454, by the American Bonding Company of Baltimore, Maryland, on behalf of Vernie C. Marshall, to the State Soil Conservation Board, dated July 27th, 1939, expiring May 29th, 1941, is placed in the hands of Miss Susanne Alsup, Secretary of the Board, as custodian, subject to the approval of the Board.

As requested by the Board, the chairman addressed a letter to the State Board of Control, asking for information relative to the purchase of tires and tubes at State Contract prices by Board Members, and employees of the Board who

use their personal cars on official state business and who draw mileage from the State for the use of same. On September 11th, the following reply from the State Board of Control was received:

"State Soil Conservation Board,
618-20 Professional Bldg.,
Temple, Texas

Gentlemen: Attention: Garlen R. Bryant

We acknowledge receipt of your letter of August 21, with reference to members of the State Soil Conservation Board purchasing tires under State contract.

Employees who use their personal cars on official State business and who draw mileage from the State for use of same, are entitled to purchase tires and tubes at State contract prices, under our arrangement with the B. F. Goodrich Company.

If you will have one of the Board members to certify to this office, in duplicate the names of those members who use their cars and state in the letter that they draw mileage from the State for the use of same, we will send one copy to the Goodrich Company and retain a copy in our office. Employees whose names are certified must furnish us with full information as to the number and size of tires and tubes desired and be sure to enclose a self-addressed stamped envelope for return, as we cannot pay private postage. Purchase orders will then be forwarded and they will be your authority to make purchases at State contract prices.

Yours very truly,
STATE BOARD OF CONTROL

J. R. Ham, Secretary *

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OPINION BY THE HONORABLE GERALD C. MANN, ATTORNEY GENERAL OF TEXAS

Opinion No. O-906

Re: Interpretation of Texas Conservation Law, particularly Section 4, Paragraph F.

" We are in receipt of your letter of June 15, 1939 in which you request the opinion of this department upon the following questions:

"Should certain funds as in provided, be exhausted, may the Board employ contingent funds for such items as may, in the judgment of the Board, be necessary to carry its work forward in an efficient manner?

"Where may public hearings be held?

"Will certification of expense account of delegates to district conventions be required?

"Will Board members, as such, come under Social Security?"

We shall attempt to answer these questions in the order in which they are asked.

The appropriation for the use of the State Soil Conservation Board in the administration of the Texas Soil Conservation Law is provided therein. The General Departmental Appropriation Bill of the Forty-sixth Legislature, S.B. No. 427, does not include the State Soil Conservation Board among the State departments and agencies it covers.

38 Tex. Jur. 844:

"The appropriation need not, however, be made in the General Appropriation bill, nor is any particular form of words required."

Sections 14 and 14a, of House Bill No. 20, otherwise the Texas Soil Conservation Law, are the pertinent parts of the Act. Section 14 calls for the appropriation of a sum of \$10,000.00 for the purpose of creating and maintaining the State Soil Conservation Board until August 31, 1939. The purposes for which this sum may be expended are not itemized.

Section 14a provides for the appropriation of several sums for the two year period beginning September 1, 1939, and ending August 31, 1941. A specific sum is designated in each instance along with the purpose or purposes for which it may be expended. Under the heading "Administrative Expense" a sum of \$3,000.00 for the year ending August 31, 1940, and the sum of \$2,500.00 for the year ending August 31, 1941, are earmarked for "Light, Heat, Water, and Contingent". (Underscoring ours.)

We presume, since this is the only contingent fund set up for the administration of the act, that your question pertains to it.

It is, of course, elementary law that money appropriated by the Legislature cannot be used for any other purpose than that specified in the appropriation bill without constituting a mis-application of public funds.

Conference opinion, Attorney General's Department, August 18, 1921, by Honorable E. F. Smith:

"It is the law of the State that no part of the money appropriated by the Legislature can be used for any purpose other than the specific purpose named in the appropriation bill. An expenditure for a purpose other than the one for which the money was appropriated would be a mis-application of public funds. The Comptroller would not be authorized to draw his warrant on any fund for any purpose except the purpose named in the Act, and the Treasurer would be without authority to honor a warrant on any fund for any purpose except that named in the appropriation bill."

The above opinion quotes from 4 Corpus Juris, p. 1460, as follows:

"An appropriation of funds is an authority from the Legislature, given at the proper time, and in legal form, to the proper officers, to apply sums of money, out of ~~that~~ which may be in the treasury in a given year, to specified objects or demands against the State; the act of the Legislature in setting apart or assigning to a particular use a certain sum of money to be used in the payment of debts, or dues, from the State to its creditors; a setting apart from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money and no more for that object, and for no other." (Underscoring ours.)

See also opinion of the Attorney General's Department to Honorable George B. Simpson, State Auditor, by Honorable Joe J. Alsup, Assistant Attorney General, dated April 20, 1935, and many other opinions in the files of the Attorney General's Department.

This principle applies to all the several sums of money set forth in section 14a and their respective "purposes". In other words, money appropriated for office rental cannot be used to purchase office equipment and furniture, even if there happens to be a surplus in the former and a shortage in the latter fund.

As for the "Contingent" fund set out under No. 9, Administrative Expense, the question arises as to what purpose it shall serve.

In Vol. 2, Words and Phrases (First Series), p. 1502, it is said:

"The adjective 'contingent' as used in appropriation bills to qualify the word 'expenses' has a technical and well-

understood meaning. It is usual for Congress to enumerate the principal classes of expenditures which they authorize, such as clerk hire, fuel, light, postage, telegrams, etc., and then to make a small appropriation for the minor disbursements incidental to any great business, which cannot well be foreseen, and which it would be useless to specify more accurately. For such disbursements, a round sum is appropriated under the head of 'contingent expenses'. *Dunwoody vs. United States (U.S.) 22 Ct. Cl. 269, 280.*"

The moneys of a contingent fund are to be used for purposes the Legislature could not foresee or anticipate. No part of it can be used for supplementing the funds appropriated for specific items, for example, salaries, office rental, stationery and printing, etc. Where definite sums are appropriated for specific purposes, moneys in a contingent fund are not available for expenditure in connection with these specific purposes. A "contingent" fund in itself implies unpredictable items of cost and expense. Where the Legislature has foreseen various expenses and provided for them definitely, it is not its intention that moneys in a contingent fund be used for expenses other than those the Legislature failed to foresee. A contingent fund is not available for enumerated expenditures.

Answering your first question, it is our opinion that in the event any of the funds set forth in Section 14a for specific purposes are exhausted, the State Soil Conservation Board is without power or authority to spend contingent funds on said items, the contingent moneys going not for enumerated items or purposes, but for contingencies not contemplated by the Legislature.

Your attention is called to an opinion of this department by Honorable Edward Clark, dated May 29, 1933, to Honorable George H. Sheppard, Comptroller of Public Accounts, and also opinion No. O-184 by Honorable Morris E. Hodges to Honorable George H. Sheppard, Comptroller of Public Accounts.

Your second inquiry is:

"Where may public hearings be held?"

It appears to us that this question is fully answered in Paragraph E, Section 4, where the Act reads:

"The State Board shall keep a complete and accurate record of all its official actions, hold such public hearings at such times and places within the State as may be determined by the Board, and shall promulgate such rules and regulations as may be necessary for the performance of the functions of said board under the provisions of this Act - - -" (Underscoring ours).

In Section 5, headed "Creation of Soil Conservation District", it is provided for a "hearing" upon the question of the desirability and necessity of the creation of a soil conservation district where the necessary petition has been filed with the Board. It is not required in the Act that such hearing be

held within the confines of the proposed district, but since "all owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard", it is apparent that in giving the board a wide discretion in the matter of holding hearings, the Legislature contemplated that the board would consider the convenience of the interested individuals or group.

Section 13 of the Act provides that the Board may conduct public meetings and public hearings upon petition for discontinuance of a district. Here again the presumption is that the Board would call the meeting, or hearing, within the district for the convenience of the land owners and interested parties therein.

Section 8 of the Act authorizes "the supervisors of any district" to hold public meetings and public hearings whenever necessary and the district Board of Adjustment is given a similar power with respect to the petitions of landowners seeking an adjustment under Section 10. Of course, hearings of the district supervisors and Board of Adjustment would be held in the particular district they represent.

Answering your question specifically, it is our opinion that the Board is authorized to hold its necessary public hearings at such times and places within the State as it may determine suitable and convenient.

The third question in your request reads as follows:

"Will certification of expense account of delegates to district conventions be required?"

Section 4 provides as follows:

"Members of a county soil conservation advisory committee shall receive no compensation for their services except the delegate to the district convention who shall receive the amount incurred as necessary expenses and \$4.00 per day not to exceed two days to be paid by the State Soil Conservation Board created herein."

It is our opinion that this question is answerable in the affirmative. Authority for certification is found in Article 4359, Texas Civil Statutes, as amended, Acts, 1931, the pertinent portion of which reads as follows:

"No warrants shall be prepared (by the Comptroller) except on presentation to the warrant clerk of a properly audited claims, verified by affidavit to its correctness, the proper auditing of which claims shall be evidenced by the initials written therein by the person auditing the same; and such claims so verified and audited shall be sufficient and the only authority for the preparation of a warrant or warrants. . . ."

Under the above statute the Comptroller would be prohibited from pre-

paring a warrant to cover a delegate's expense to a district convention unless the expense account was properly itemized and certified.

Finally, you ask if members of the State Soil Conservation Board come under "Social Security".

By "Social Security" we assume you mean the Texas Unemployment Compensation Act, which is the only state legislation commonly designated social security requiring the filing of reports and payments of taxes.

Section 10 (G) (5) of the Texas Unemployment Compensation Act of the Texas Civil Statutes, as amended by the Forty-sixth Legislature, reads as follows:

"The term 'employment' shall not include:

"(A) Service performed in the employ of the State, or of any political subdivision thereof or of any instrumentality of the State or its political subdivisions."

The same exemption is accorded under the pertinent provisions of the Federal Social Security Act. U.S.C.A., Title 42, Section 410 (6) (Federal Old Age Benefit), and Section 1011 (7) (taxes with respect to employment.)

The State Soil Conservation Board is undoubtedly an instrumentality of the State, a creature of the Legislature, an agency of the people.

Section 3 (4) states that "Board" or "State Soil Conservation Board" means the agency created in Section 4 of the Act.

Section 3 (9) reads:

"'Agency of the State' includes the government of the State and any subdivision, agency, or instrumentality corporate or otherwise, of the government of the State."

Consequently, you are advised that members of the State Soil Conservation Board do not come within the coverage of State and Federal Social Security Acts. "

OPINION BY HONORABLE GERALD C. MANN, ATTORNEY GENERAL OF TEXAS

"Opinion No. O-1204

Re: Meaning of equitable title as referred to
in section 3 § 12 of H. B. 20, State Soil
Conservation Act.

We are in receipt of your letter of July 27 and July 31, 1939, requesting
an opinion on the following question:

"Please advise us as to what constitutes equitable
title, as referred to in Section 3, § 12 (of House Bill No.
20, the State Soil Conservation Act)?" (Parenthetical insertion ours.)

Subsection 12 of Section 3 of House Bill No. 20, reads as follows:

"'Landowner' or 'owner of land lying outside of
incorporated cities and towns' includes any person who
holds legal or equitable title of any lands lying within a
Soil Conservation District organized under the provisions
of this Act and who is a duly qualified voter within such
district". (Underscoring ours.)

One of the earliest definitions of "equitable title" to be found in
the decisions of Texas Courts is that of the Supreme Court in Hill v. Moore,
62 Texas, p. 610, which is as follows:

" * * * an equitable title; by which is meant any right
in land inferior to the legal title, such as a court of
equity, as distinguished from a court of law, in the exercise
of its well recognized powers would enforce."

In the case of Tanner v. Imle, et al, 253 S. W. 665, the
Court of Civil Appeals of San Antonio adopted the following opinion
of "equitable title":

"An 'equitable title' is not a title, but is a mere
right in the party to whom it belongs to have the legal title
transferred to him." (Thygeron v. Whitbeck, 5 Utah 406, 16 Pac. 403,404.)

Texas Jurisprudence, Vol. 41, on page 470, follows the Supreme Court
definition in Hill v. Moore, supra.

It is a well recognized principle of law that the action of trespass
to try title may be maintained by one who has only an equitable title or interest
in land. See 41 Tex. Jur. p. 470, in cases cited in footnot 2.

It is our opinion that "equitable title" as referred to in Section 3,
§ 12 of House Bill No. 20, means a title based on a right in the possessor thereof

to have the legal title transferred to him. As an illustration we cite the equitable title established by an instrument which is apparently a deed of trust but was intended to operate as a mortgage, or again an instrument creating a trust. Mortgages and deeds of trust create equitable titles. It is impossible to enumerate every type of equitable title. Persons who own equitable titles and seek to qualify as a "landowner" under subsection 12 of Section 3 of House Bill No. 20, will have to plead the equities upon which reliance is placed and satisfy the voting officials and the State Soil Conservation Board as to their titles before they are eligible to vote. We are calling your attention in this respect to subdivision D of Section 5 of the Act, dealing with the creation of Soil Conservation Districts. It reads.

"The Board shall pay all expenses for the issuance of such notices and the conduct of such hearings and elections, and shall supervise the conduct of such hearings and elections. It shall issue appropriate regulations governing the conduct of such hearings and elections, and providing for the registration prior to the date of the election of all eligible voters. All such elections held under the provisions of this Act shall be in conformity with the general election laws of this state, except as herein otherwise provided, and except that the ballot shall not be numbered or marked for identification purposes." (underscoring ours.) "