

TEXAS METHODS OF ORGANIZING AND FINANCING MOSQUITO CONTROL WORK

WM. HARRIS BELL

Legal Consultant, Texas State Department of Health, Austin, Texas

Industrial progress has brought expanding population to a point where all sections of Texas are growing faster each year, and we have outgrown the laws that guided our progress in early days. Today we find cities extending far into our rural areas. We find modern homes in last year's cotton patch. Where we formerly had one rustic outhouse to take care of the needs of the family today we find modern homes with two or three bathrooms. Where we used to have one car in every driveway we now find two or three.

With this consuming desire for independence, privacy and a fair share of the "wide open spaces," we are moving to the rural areas of yesterday. Convenient large community centers are being built. Office workers and others have their homes in the country and drive over express highways each day into the business section where their living is made. At night they return to enjoy the luxury of their modern, rural homes.

This change in our way of life has brought about problems in those areas extending from our city limits to our county lines.

Cities have the authority to pass ordinances to keep pace with their growth. Ordinances requiring certain spacing between homes, the width of streets, etc., are for the protection of the person where he lives and for the protection of the general public.

Commissioners' Courts, on the other hand, have only that authority given them by our Legislature. The Constitution in creating the Commissioners' Court did not clothe it with any general authority over county business, but merely gave it such special powers and jurisdiction as is conferred by the Constitution itself and the laws of the State as might be thereafter prescribed.

Decisions of the Texas courts have repeatedly held that a Commissioners' Court is a court of limited jurisdiction and has only such powers as is conferred upon it either by specific terms or by the statutes and Constitution of this State.

The two authorities that we have today controlling those areas outside of our cities are (1) that authority contained in Article 974a of our Texas Civil Statutes which gives cities the right to regulate their future growth within an area of a five-mile radius. This law provides that the city planning commission (or the governing body where there is no planning board) may require that plans of all subdivisions within a five-mile radius of the city be approved before permitting them to be recorded by the County Clerk.

The second authority is the right of cities to require the same regulations to be met by those that are furnished water by the city, outside of the limits, as those that receive water within the city limits.

These two are the only authority that we have to take care of that area extending from city lines to county lines and which is referred to as "No Man's Land."

This area lacks any control measures by the city or the Commissioners' Court. Here the dumping of garbage and waste cannot be controlled. There is no proper garbage collection. Abandoned water wells are used for cesspools. Cattle feeding lots are permitted to exist. Wastes from the cattle become breeding places for flies and the stench and odor are carried into town. Taverns, dance halls, and small carnival grounds operate without any thought of proper sanitation. Substandard housing units are built. Industrial plants operate without any authority or planning of their structure or management. Mosquito breeding in salt marshes or low areas of stagnant water is permitted to exist and

the mosquitoes are carried by the breeze into neighboring cities. These are but a few of the many complaints we receive in the Health Department from all parts of Texas. The nearby cities are helpless to control such hazards to health. The Commissioners' Court lacks proper control. All of these conditions not only menace health but at the same time are factors which lower property values.

Because Commissioners' Courts lack the authority to control specific health problems or nuisances in that area extending from the city limits to the county line, authority had to be obtained from the Legislature to set up Mosquito Control Districts.

Since mosquitoes were endangering the health of the citizens of this State, especially in those areas bordering on the Gulf of Mexico, the 51st Legislature at its Regular Session in 1949 provided for the creation, regulation and financing of Mosquito Control Districts "in all counties of this state which border on the Gulf of Mexico. . . ." This Act authorized the Commissioners' Court in such counties to call an election upon being petitioned by two hundred (200) qualified voters; the form of the ballot for the establishment of a Mosquito Control District was prescribed by the Act and also an authorization for a levy of a tax not to exceed five cents (5¢) on each one hundred dollar (\$100) tax valuation to obtain funds to finance the program.

The Act further authorizes the appointment of an Advisory Commission for the Mosquito Control District composed of five (5) members who shall be qualified property tax paying voters of the county. "Each commissioner of the Commissioners' Court and the County Judge shall appoint one (1) member of the Advisory Commission. Members of the Commission would serve without compensation."

The Commissioners' Court was further authorized to appoint a Mosquito Control Engineer "well qualified in the field of mosquito control who shall serve at a salary which shall be determined by the

Commissioners' Court and he shall be under the supervision of the Commissioners' Court."

This law was amended by the 54th Legislature so that now a Mosquito Control District may be composed of two (2) or more counties. The amendment to the Law which adds a new section number 6A reads as follows:

"The Commissioners' Court of any two or more counties operating under the provisions of this Act may enter into an agreement for the merging of their separate districts into a single mosquito control district composed of such two or more counties. Said Commissioners' Court shall enter into an agreement that in all respects complies with the provisions of this Act, except that the advisory commission and mosquito control engineer, as required above, may be appointed for the entire district, rather than for each county."

This amendment became effective April 29, 1955.

Our General Sanitation Law, Section 1, subsection (g), defines a nuisance in the following language:

"Any object, place or condition which constitutes a possible and probable medium of transmission of disease to or between human beings or any other object, place or condition which may be specifically declared by this Act to be a nuisance."

In the same Law, Section 2, subsection (a), reads as follows:

"Any and all of the following conditions are hereby specifically declared to be nuisances dangerous to the public health;"

In subsection (h) the following condition is specifically declared to be a nuisance:

"Any collection of water in which mosquitoes are breeding within the limits of any city, town or village;"

In a broad sense, a nuisance is anything that works injury, harm or prejudice to an individual or the public. (20 R.C.L., p. 380, sec. 1.) A nuisance has also been defined as anything that "obstructs, impairs, or destroys the reasonable, peaceful, and comfortable use of property." (True-

heart v. Parker, Tex. Civ. App., 257 S.W. 640, 641.)

Acts which are denounced as illegal by law, when the perpetration of them invades the rights of others will be nuisances *per se*.

The term "nuisance" means literally "annoyance,"—anything that works hurt, inconvenience, or damage. (Miller v. Burch, 32 Tex. 208, 5 Am. Rep. 242.)

A nuisance is anything that works an injury, harm, or prejudice to an individual or the public, and will embrace everything that endangers life or health, offends the human senses, transgresses laws of decency, or obstructs, impairs, or destroys the reasonable, peaceful, and comfortable use of property. (Trueheart v. Parker, 257 S.W. 640.)

Every citizen has the right to the enjoyment of his property without hurt or injury from any unlawful acts or conduct of his neighbor. (Fields Sewerage Co. v. Bishop, 30 S.W. 2d 412, error refused.)

In a more recent case, Newton v. Town of Highland Park, 282 S.W. 2d 266, a swimming pool which was found to have been a breeding place of mosquitoes could be required to be corrected, even though jury found that such fact did not endanger health of citizens.

Any place that is found to be a breeding place of mosquitoes should be corrected. Under our Texas law it is defined to be a nuisance. Under our court decisions it does not necessarily have to be a health hazard. Unfortunately, though, at the present time our authority to create Mosquito Control Districts is limited to those counties in this State which border on the Gulf of Mexico.

The law authorizing the formation of Mosquito Control Districts has served a

valuable purpose and has given relief and improved living conditions in those counties of Texas bordering on the Gulf of Mexico where mosquitoes have been a problem for many years. We in the State Health Department who have assisted in this program feel that such a program should be available to any county in Texas where mosquitoes create a problem. At the present time this is impossible. We believe that an amendment should be made to our present law so that such a program would not be limited to the coastal areas of Texas but would be available to any county where the formation of a Mosquito Control District is needed.

The present financial structure limiting an authorization for a levy of taxes not to exceed five cents (5¢) on each one hundred dollar (\$100) tax valuation should be amended and a tax levy of at least twenty-five cents (25¢) on each one hundred dollar (\$100) tax valuation or a limit of this amount should be authorized. Such an amendment would enable less fortunate counties not blessed with industrialization and valuable real properties to collect sufficient funds to support adequate mosquito control programs.

The increasing trend of our population toward rural areas where tremendous investments are being made in housing, makes it a matter of critical importance that our statutes be amended to more adequately control mosquito breeding in these areas as well as other nuisances and problems related to public health. The matter of mosquito control can be accomplished only when any county has the authority to initiate an over-all control program and collect an adequate tax to cover the cost of the program.