



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Leo Presnell
County Attorney
Upshur County
Gilmer, Texas

Dear Sir:

Opinion No. 0-1000

RE: May a city and county enter
into a partnership in the
purchase of a motor grader
for road and street repair
work?

Your request for an opinion on the above stated ques-
tion has been received by this office.

Your letter reads in part as follows:

"In purchase of a motor grader for
road and street repair work, could the Com-
missioners' Court of Upshur County legally
enter into a partnership agreement with the
city of Gilmer whereby each would pay an
equal amount of purchase price, and divide
the time accordingly as to its use on county
roads and streets of the city?"

The Commissioners' Court is a court of limited power
and jurisdiction, and has no powers or duties except those
which are clearly set forth and defined in the Constitution
and statutes. The statutes have clearly defined the powers,
prescribed the duties, and imposed liabilities of the Com-
missioners' Court, the medium through which the different
counties act, and from these statutes must come all of the
authority vested in the county. Tex. Jur. vol. 11, p. 563;
Edwards County v. Jennings, 33 S. W. 585.

We quote from Texas Jurisprudence vol. 11, p. 632 as
follows:

"The authority of the commissioners' court-as the governing body of a county to make contracts in its behalf is strictly limited to that conferred either expressly or by fair or necessary implication by the constitution and laws of the state. If the commissioners' court acts without authority in making a contract, the county is not bound by its action. However, although an attempted contract is beyond the power and authority confided in the county commissioners, it may be enforceable, apparently, if it is not illegal as well as ultra vires. The wisdom of a contract is not a matter into which a judicial tribunal will inquire; and the court will not substitute its judgment for that of the commissioners' court so long as the latter contracts under the authority of law. Again, the general powers given to the commissioners' court are of little practical value without the further authority to use adequate means to insure the proper, intelligent and effective exercise thereof.

"The commissioners' court must have authority of law for its contract, and, if the authority has been given, a reasonable construction of it will be given to effect its purpose."

Also, see the cases of: Roper v. Hall, 280 S. W. 289; Baldwin v. Travis County, 88 S. W. 480; Tarrant County vs. Rogers, 125 S. W. 592; Commissioners' Court v. Wallace, 15 S. W. (2d) 535.

"Municipal corporations are the creatures of the State, contrived for its benefit; and they are invested with such authority and privileges, and have only such powers, as the State has seen fit to confer upon them. They exercise only delegated authority; all acts done by them must find authority in the law of their creation. Common law prerogatives of

the State are generally held not to be available to them. * * *" Tex. Jur. vol. 30 p. 97; Trent v. Randolph, 130 S. W. 191; Town of Griffing Park, v. City of Port Arthur, 38 S. W. (2d) 593.

"The extent of the authority of municipal corporations is a question of construction. Their powers granted to them are usually strictly construed; any fair, reasonable or substantial doubt concerning the existence of power is to be resolved against the corporation, and the disputed power is to be denied. * * *" Tex. Jur. vol. 30, p. 110; City of Brenham vs. Holle & Seelhorst, 153 S. W. 345; City of Cleburne v. Gulf, C & S. F. R. Co., 1 S. W. 342; West v. City of Waco, 294 S. W. 832.

Article 2356, R. C. S. reads as follows:

"Said court may erect bridges within the corporate limits of any city or town to the same extent and under the same conditions now prescribed by law for the construction of bridges outside the limits of any city or town. Said court and the governing body of any city or town may cooperate in the erection of a bridge within the corporate limits of a city or town, and jointly erect such bridge upon terms and conditions mutually agreed upon; and either or both the city and county may issue its bonds to pay its proportionate part of the debt by complying with the requirements of the law regulating the issuance of bonds by counties and cities and towns."

Article 4492, R. C. S., reads as follows:

"Any commissioners' court may co-operate with and join the proper authorities of any city having a population of ten thousand persons or more in the establishment, building, equipment and maintenance of a hospital in said city, and to appropriate such funds as may be determined by said court, after joint conference with the authorities of such city or town, and the management of such

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hospital shall be under the joint control of such court and city authorities."

The above-quoted statutes specifically authorize contracts between counties and cities for specific purposes therein stated; however, after a diligent search of the statutes we do not find any statute authorizing a city and county to enter into a partnership in the purchase of a motor grader for road and street repair work. And, in the absence of a statute authorizing a city and county to enter into a contract and partnership in the purchase of a motor grader, the city and county would have no authority to do so.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that the Commissioners' Court of Upshur County cannot legally enter into a partnership agreement with the City of Gilmer to purchase a motor grader for road and street repair work.

Trusting that the foregoing answers your inquiry, we remain.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Ardell Williams
Assistant

AW-MR/pam

APPROVED JUN 26 1939
GERALD C. MANN
ATTORNEY GENERAL OF TEXAS