



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. J.C. Gowdy  
County Auditor  
Wichita County  
Wichita Falls, Texas

Dear Sir:

Opinion No. 01149

Re: When a county is operating on a cash basis, may interest be legally paid on overdrafts at local banks?

Your request for an opinion on the above stated question has been received by this department.

Your letter reads, in part, as follows:

"The Commissioners' Court of this county is considering the advisability of operating on a cash basis rather than by issuance of scrip as has been the practice for the past two years.

"Before adopting such a policy the Commissioners' Court desires to be advised as to whether interest may legally be paid upon overdrafts at the local banks."

We find in 15 CORPUS JURIS, p. 606, the following rule:

"As a general rule, in the absence of statutory provision therefor, county orders or warrants in the usual form do not bear interest, at least until after demand and refusal of payment; and in some jurisdictions the allowance or payment of interest on county script is expressly forbidden,

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even after such demand and refusal, and even though the order contains a clause for the payment of interest. In some jurisdictions, however, a county board may issue interest bearing warrants to cover certain obligations of the county. Although, when authorized by statute, interest on outstanding warrants can be allowed only from the time the statute authorizing its payment goes into effect, and a change of the legal rate does not apply to interest on warrants which have already become entitled to draw interest, invalid warrants which are ratified and validated will draw interest as though they were valid when issued."

We quote from RULING CASE LAW, Vol. 15, p.p. 17 and 18 as follows:

"It is well settled, both on principle and authority, that a state cannot be held to the payment of interest on its debts unless bound by an act of the legislature or by a lawful contract of its executive officers made within the scope of their duly constituted authority. This principle applies to bonds, claims, judgments, and warrants. The theory upon which the rule is based is that whenever interest is allowed either by statute or by common law, except in cases where there has been a contract to pay interest, it is allowed for delay or default of the debtor. But delay or default cannot be attributed to the government. It is presumed to be always ready to pay what it owes. The apparently favored position of the government in this respect has been declared to be demanded by public policy. A county is generally regarded as but an arm or agent of the state, and not liable for interest, in the absence of an express agreement to pay it. This rule applies to county warrants or orders and in general to

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county contracts, but a county is generally liable for interest on coupons on its bond after maturity. \* \* \*

The case, COMMISSIONERS' COURT vs. WALLACE, 15 S.W. (2d) 535, holds that 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 is purpose.

We quote from the case of EASTLAND vs. CHAPMAN, 278 S.W. 4-5, as follows:

" \* \* \* It is very generally stated that interest is of a purely statutory origin, and not the creature of the common law, and that interest should be refused except in such cases as come within the terms of the statute."

Section 53 of Article 3 of the State Constitution, reads as follows:

"The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law."

We quote from THE JUR., Vol. 11, p. 603, as follows:

"The method of administering the finances of counties is fully provided for by the statutes, and the requirements of the law may not be departed from. \* \* \*

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After a careful search of the statutes and the constitution we are unable to find any authority authorizing the Commissioners' Court to pay interest on overdrafts.

We quote from TEX. JUR., Vol. 11, p. 564, as follows:

"Commissioners' Courts are courts of limited jurisdiction, in that their authority extends only to matters pertaining to the general welfare of their respective counties and that their powers are only those expressly or impliedly conferred upon them by law, -that is, by the constitution and statutes of the state."

On August 9, 1937 this department held in an opinion written by Hon. Scott Gaines, Assistant Attorney General, addressed to Mr. J.R. Jones, County Auditor, Wichita Falls, Texas, "that this department has consistently held that the county commissioners' court was without authority to allow and pay interest on ordinary county warrants or script issued in payment of current expenses. Therefore, interest could not be paid by a county to the county depository on overdraft created in the general fund, road and bridge fund or the officer's salary fund or any other fund of the county." Also see the case of the STATE OF TEXAS vs. WILSON, 71 Texas 291.

You are respectfully advised that it is the opinion of this department that when a county is operating on a cash basis, such county cannot legally pay interest on overdrafts.

Trusting that the foregoing answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

*Ardell Williams*

Ardell Williams  
Assistant

AK:cb

APPROVED SEP 8, 1939

*Frank Mann*

ATTORNEY GENERAL OF TEXAS

