



Gerald C. Mann
~~PRICE DANIEL~~
ATTORNEY GENERAL

**THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS**

Mr. Geo. A. Hight
Chief Accountant
Board of County and District Road Indebtedness
Austin, Texas

Dear Sir:

Opinion Number O-1989

Re: Whether or not road bonds voted by a defined road district prior to January 2, 1939, may now be issued and the proceeds expended in the construction of a designated State highway and will be eligible for participation in the County and Road District Highway Fund in the same manner as bonds voted by a county?

We acknowledge receipt of your letter of February 21, 1940, in which you propound the above captioned question and request our opinion thereon.

Road bonds issued by counties, political subdivisions and defined road districts are, under certain conditions, eligible to participate in the County and Road District Highway Funds as provided by House Bill 688, passed by the Forty-sixth Legislature, Regular Session, 1939. Such bonds become eligible for participation only upon the designation of such road as a State highway, and under Section 3 of House Bill 688 the counties, political subdivisions and road districts are prohibited from further improving such road with money furnished by them. This section reads as follows:

"All further improvements of said State Highway System shall be made under the exclusive and direct control of the State Highway Department.

and with appropriations made by the Legislature out of the State Highway Fund. No further improvement of said system shall be made with the aid of or with any money furnished by the counties except for the acquisition of rights-of-way which may be furnished by the counties, their subdivisions or defined road districts."

We think the language of this section of the bill clear and presents no difficulty in interpreting the intention of the Legislature, and unless some other provision of the law provides an exception to Section 3, it is our opinion that no further improvement of State highways may be made by counties, political subdivisions or road districts of the State. However, Subsection (a) of Section 6 of House Bill 688 contains the following language:

"In addition to and regardless of the other provisions of this Act, all bonds voted by a county prior to January 2, 1939, insofar as amounts of same were or may be issued and the proceeds actually expended in the construction of roads which are a part of the designated system of State highways, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund, the same as provided for other bonds under this Act and as of the date of the designation of said road as a part of the State System * * *".

It is obvious from a reading of the foregoing section that we have an exception to Section 3, above quoted, and as to the validity of this section, we refer you to our opinion Number O-1334, addressed to the Honorable Murphy Cole, County Auditor of Liberty County, Liberty, Texas. It was our conclusion therein that the provisions of Section 6, Subsection (a) of said bill, although in conflict with Section 3 thereof, must be construed as an exception and should be permitted to stand.

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Having concluded that Subsection (a) of Section 6 is in conflict with Section 3 of House Bill 688, and that it must be considered an exception, it follows that the rules of statutory construction pertinent under such circumstances must be applied. The weight of authority goes with the conclusion that exceptions must be strictly construed. In the case of the Gulf States Utilities Company v. State, 46 S. W. (2d) 1018, error refused, the court held that a provision of a statute constituting an exception to general classifications thereof must be strictly construed. And to the same effect is the case of Holmes v. Coalson, 154 S. W. 661, wherein it was held that exceptions to a statute of general terms cannot be enlarged to include cases not embraced within the exception by mere implications of parity of reasons. Accordingly, we call your attention to Subsection (a) of Section 6, above quoted, and have underlined the word "county" appearing in that section. It will be noted that the Act says - "All bonds voted by a county * * *" - and nowhere do we find the expression "defined road district."

You are accordingly advised that in our opinion Subsection (a) of Section 6 of House Bill 688, under the rules of statutory construction, limits bonds that may become eligible to participate in the distribution of moneys coming into the County and Road District Highway Fund to such bonds as may have been voted by a county, and does not extend to bonds that may have been voted by a defined road district or political subdivision, irrespective of the time said bonds were voted.

Trusting that this satisfactorily answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Clarence E. Crowe

Clarence E. Crowe
Assistant

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APPROVED FEB. 29, 1940

OKING

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY H. B.