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OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. P. Jennings
County Auditor
Hardin County
Kountze, Texas

Dear Sir:

Opinion No. 0-2562

Re: The Commissioners Court of Hardin County has no authority to purchase and pay for tires and tubes for an automobile owned by a County Commissioner which he uses in the conduct of county business. And related matters.

Your recent request for an opinion of this Department on the questions as are herein stated has been received.

We quote from your letter as follows:

"You will render this office your opinion to this office on the following question of expenditure of County Funds.

"(A) In the case of County Commissioner privately owns automobile in which he conducts county business, is the Commissioners' Court permitted to purchase tires, and tubes for his car charged to county funds, if so out of what fund?

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"(B) Under what authority or Article is Liberty County, Texas permitted to purchase automobiles for the County Commissioners, and out of what fund?

"Would appreciate your giving this office your opinion on the above questions immediately as we have a claim to act on."

Many counties of this State operate under special road laws, which laws provide generally for a more detailed road system in such counties, and also provide for the payment of accounts incurred by the county commissioner in the operation of their own private automobiles while supervising the maintenance of roads in such counties. In some instances these special road laws provide for the purchase and payment of various kinds of equipment, including pick-ups, etc.

In an opinion of this Department dated August 5, 1920, and published at page 114 of the Biennial Report for the years 1918-20, it was held by this Department that county commissioners are not authorized to purchase and pay for gasoline or other automobile supplies and submit their claims therefor to the Commissioners' Court for audit and allowance, and claims for such supplies furnished for such purposes are not legitimate charges against the county, whether so purchased and paid for by the Commissioners or sold direct to the county by the dealer. This opinion cites the cases of Knippa vs. Stewart Iron Works, 66 S. W. 332; Rigby vs. State, 10 S. W. 760; and Harris County vs. Hammond, 203 S. W. 445. We quote from the above mentioned opinion as follows:

"It is axiomatic that public funds can be lawfully expended only for the purposes, to the extent and in the manner prescribed by law, and in the absence of a statute authorizing a particular expenditure of public funds, such expenditure should be studiously avoided; and that every officer should faithfully eschew every transaction respecting public finance that bears even the semblance of doubtful authority ought to go without saying.

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"We are of the opinion, therefore, and you are so advised, that it is not proper for a county commissioner to purchase and pay for gasoline or other automobile supplies used by him in the discharge of his official duties and present his account for same to the commissioners' court for audit and payment; also, that such an account is not a legitimate charge against the county whether such supplies be purchased and paid for by the commissioner in the manner stated, or be furnished and charged to the county for that purpose by the dealer direct."

We believe the doctrine laid down in the above mentioned opinion to be sound, and we approve the same as applicable to your request.

Hardin County has a population of 14,760 inhabitants according to the last preceding Federal Census, and Section 1a of Article 2350m, Vernon's Annotated Civil Statutes deals with the amount of salary a commissioner is entitled to receive in counties containing a population of not less than 14,500 and not more than 14,800 inhabitants according to the last available Federal Census, and each available Federal Census thereafter.

The general law or the above mentioned Section of Article 2350m, supra, makes no provisions for the payment of accounts or expenses incurred by commissioners while using their own private automobiles in connection with their business as county commissioners. Therefore, your first question is respectfully answered in the negative.

We now consider your second question, and your attention is directed to Section 1, Acts 1935, 44th Legislature, Second Called Session, page 1711, Chapter 443, relating to salaries of county commissioners in certain counties. Liberty County has a population of 24,500 inhabitants according to the last preceding Federal Census, and the above mentioned Act provides that in counties having a population of not less than 24,200 and not more than 24,500 inhabitants according to the last preceding Federal Census, the commissioners' court is authorized to allow each commissioner the sum of twenty-five dollars per month

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for traveling expenses within the county while on official business, which sum shall be paid out of the road and bridge fund of the respective commissioner's precinct, and/or the general fund of the county not to exceed fifty per cent of said expenses, and each commissioner shall make under oath an itemized account of his expenses for each month. There is nothing in this Act which authorizes Liberty County to purchase automobiles for the county commissioners. After a careful search of the statutes, we are unable to find any special statute, or road law which authorizes Liberty County to purchase automobiles for the county commissioners of said county, to be used by the county commissioners in the conduct of their office.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

APPROVED AUG 2, 1940

W. P. [Signature]

FIRST ASSISTANT
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

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COMMITTEE