



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Melvin Combs  
County Attorney  
Beaumont, Texas

Dear Sir:

Opinion No. 0-3992  
RE: Constitutionality of  
House Bill 431, Thirty-  
second Legislature.

In your letter of September 16, 1941, you request our opinion as to the constitutionality of House Bill 431, p.167, Local and Special Laws, Thirty-second Legislature, an Act intended to render more effective and efficient the then existing road law of the State of Texas, in its application and operation in Jefferson County. Sections 2 and 3 of the Act deal with the powers and duties of the Commissioners' Court and its members and their compensation, Sections 4 and 5 relate to the issuance of bonds, and Sections 6 and 7 read as follows:

"Sec. 6. The provisions of this Act shall not be construed as in any manner abridging or limiting the authority of the commissioners court of said county in the matter of public roads or bridges as now provided by law, but the same is intended and shall be cumulative, and in addition to, and in aid of, the present law, to render the same more efficient in its operation.

"Sec. 7. The funds derived from any road tax or from the sale of any bonds herein provided for, shall be prorated between the commissioners district of said county when said tax is so levied or said bonds are so issued, in the ratio that the amount of taxes collected

in the district bears to the whole amount so collected or obtained by the county, and the commissioners court shall require its county treasurer to keep a separate account for each commissioner's district of said county of all the road funds so obtained by the county."

Your letter indicates that you are concerned with the question as to whether the Act is violative of Art. 3, Sec. 56, of the State Constitution, and your question will be treated accordingly.

Art. 3, Sec. 56 of the State Constitution, provides that "the Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law . . . regulating the affairs of counties . . . or prescribing the powers and duties of officers, in counties . . ." and your letter indicates that it is this section of the Constitution with which you are concerned. Furthermore, Art. 11, Sec. 2 of the Constitution, provides that "the laying out, construction and repairing of county roads shall be provided for by general laws."

However, it is contained in Art. 8, Sec. 9, of our State Constitution, that "the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws." Under this last quoted provision, the courts have sustained local laws providing for the laying out, construction and repairing of county roads. *Dallas County v. Plowman*, 91 S. W. 221; *Hughes v. Com'rs' Court of Harris County*, 35 S. W. (2) 818; *Henderson County v. Allred*, 40 S. W. (2) 17, Supreme Court; *Tinner v. Crew*, 78 S. W. (2) 585, Supreme Court. In other cases certain special or local road laws have been held to violate said Art. 3, Sec. 56, but the reasoning back of the line of cases holding such acts to be invalid is pointed out in the following quotation from *Henderson County vs. Allred*, supra:

"We are referred to the cases of *Altgelt v. Gutzelt et al*, 109 Tex. 123, 201 S.W. 400; *Meyenberg v. Khlinger*, County Judge (Tex. Civ. App.) 224 S. W. 312, 315; *Commissioners' Court of Limestone County v. Garrett* (Tex. Com. App.) 236 S.W. 970; and *Austin Brothers v. Patton* (Tex. Com. App.) 288 S.W. 182, as being decisive of the in-

validity of the special road law which is here assailed.

"A special road law was declared invalid in the *Altgelt Case* as an attempt to regulate the affairs of the county by changing the salaries of members of the commissioners' court to a fixed compensation per year in lieu of the fees and per diem provided by the general law. In the *Mayenberg Case* the special road law was struck down because it authorized the Legislature to 'levy a local tax for road purposes contrary to other provisions of the Constitution limiting the power of the Legislature in levying taxes'. In the *Limestone County Case* the special road law was declared void by the court because the Legislature was not authorized in passing a local law to create offices, and in the *Austin Brothers Case* the law involved was condemned because it authorized the creation of offices by local law and clothed the officers with functions already performed by existing officers under the provisions of the general laws.

"It is obvious from the above cursory review of the cases relied upon that the holding in neither of them is in conflict with the conclusion we have reached in this case. All of the special laws condemned by the above decisions were attempts to regulate by local law the affairs of a county in direct contravention of the provisions of the Constitution of this state, while the special road law for Henderson county is merely an act by which the Legislature has made provision for the disposition of the county's road taxes for a purpose for which they may be lawfully applied. The question as to whether it possessed the power to do this is set at rest by the decision of our Supreme Court in *Dallas County v. Bowman, supra.*"

We do not find the Act in question to be subject to any of the vices contributing to the invalidity of the acts dealt with in the cases referred to in the quotation from the *Henderson County vs. Allred* case. The fact that

this Act prescribes certain duties of the commissioners' court in respect to the public roads and in that way perhaps indirectly diminishes the time of that body which may be left for attention to regular county affairs does not bring about its invalidity as being an act regulating the affairs of counties or prescribing the duties of county office s. Harris County Road Control District v. Mann, 140 S. W. (2) 1098. The same thing may be said with respect to the duties cast upon the county treasurer in Sec. 7 of this act. The provision of funds to the different districts, as provided in Section 7 of the Act, is incidental, if not necessary, to the plan of constructing and maintaining the public roads. It is our opinion that said House Bill 431, 32nd. Leg. does not violate Art. 3, Sec. 56, of the Texas Constitution.

Yours very truly

RECEIVED OCT 7, 1941

ATTORNEY GENERAL OF TEXAS

*Robert R. Lee*  
ASSISTANT  
ATTORNEY GENERAL

BY *Glenn R. Lewis*  
Glenn R. Lewis  
Assistant

DLR:ST

