



THE ATTORNEY GENERAL  
OF TEXAS

Gerald C. Mann

XXXXXXXXXXXXXXXXXXXX  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. Brady Gentry, Chairman  
State Highway Commission  
Austin, Texas

Opinion No. 0-4254

Re: Whether or not it is manda-  
tory for State Highway Commission  
to accept funds tendered it under  
the County and District Road Bond  
Assumption Law.

Dear Sir:

We acknowledge receipt of your request on the ques-  
tion herein stated. Your request is as follows:

"Reference is made to paragraph 4 of Section  
6-A, Acts of the First Called Session of the 47th  
Legislature, and particularly to that part of  
paragraph 4 which reads:

"\*\*\*\*\* and where such bonds or warrants were  
voted prior to January 2, 1939 and prior to the  
designation of the road as a State Highway and  
which have not yet been issued or expended, the  
county or defined road district may issue such  
bonds or warrants or other legal evidence of in-  
debtedness and place the proceeds in escrow with  
the State Highway Commission for the construction  
of such road under plans, contracts, specifica-  
tions and supervision of the State Highway Depart-  
ment, and when so expended the bonds, warrants or  
other evidences of indebtedness shall be eligible  
to participate in the County and Road District  
Highway Fund the same as if the bonds had been is-  
sued and expended prior to January 2, 1939\*\*\*\*\*"

"From the above wording, it will be seen that  
under certain conditions therein outlined, county  
funds may be expended by the State Highway Depart-  
ment on designated State Highways, after which the  
county bonds, warrants and other legal evidences  
of indebtedness become eligible for participation  
in the county and road district Highway Fund. The  
references to the Highway Commission and Highway  
Department have raised in our minds the following  
questions, on which we would be pleased to have  
your opinion: First, does the act require the  
Highway Commission to accept all funds coming within

Hon. Brady Gentry, page 2

the paragraph referred to which may be tendered to it by counties, and expend such funds in the construction of the designated roads, or does the act confer upon the Highway Commission the discretion to determine which, if any, county funds will be accepted and expended and which shall not be accepted and expended?"

The answer to your request necessarily depends upon whether or not the quoted portions of the County and District Road Bond Assumption Law is an expressed grant to the counties of the power to determine when, where and how State Highways shall be constructed. This is true because if it is mandatory that the State Highway Commission accept all funds tendered it by the various counties such would be the necessary result.

The 38th Legislature of Texas authorized the State Highway Commission to take over and maintain the various State Highways. The effect of this Act was to vest in the State Highway Commission all the power with reference to State Highways that was formerly exercised by Commissioners' Courts. State Highway Commission v. Humphreys, 58 S.W. (2d) 144. Therefore the State Highway Commission has the sole power to determine when and where highways will be located, (Mosheim v. Rollins, 79 S.W. (2d) 672, and City of Wichita Falls v. Real Estate Trust, 135 S.W. (2d) 736), and the individual counties of the State have no right or power to construct and maintain State Highways. Iverson v. Dallas County, 110 S.W. (2d) 255.

The counties were permitted to aid in the construction of State Highways by the Acts of 1925, Article 6674c, Revised Civil Statutes, but the 42nd Legislature, 3rd Called Session, page 115, of the Acts of 1932, repealed said Article and thereafter the counties could do nothing in regard to State Highway construction, except procure rights-of-way under Article 6674n, Revised Civil Statutes.

The portion of the enactment under consideration only authorizes the counties to issue the bonds which were voted prior to January 2, 1939, and prior to the designation of the road as a State highway. It is a grant to the counties, whose bonds will qualify, of the power to assist in highway construction subject to the plans, contracts, specifications and supervision of the State Highway Department.

From the time of the creation of the State Highway Department it has always had complete and exclusive powers to

Hon. Brady Gentry, page 3

determine all questions relating to State Highway construction and we do not regard the enactment here in question as being a mandatory order to the State Highway Commission to accept the funds and build the highway authorized by the bond issue.

You are, therefore, advised that the State Highway Commission may determine which county funds it will accept and expend for State Highway Construction.

Trusting that the foregoing fully answers your inquire, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Richard H. Cocke  
Richard H. Cocke, Assistant

APPROVED DEC 18, 1941  
/s/ Grover Sellers  
FIRST ASSISTANT ATTORNEY GENERAL

APPROVED: OPINION COMMITTEE  
BY: BWB, CHAIRMAN

RHC:db:wb