



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Ben J. Dean
District Attorney
Breckenridge, Texas

Dear Sir:

Opinion No. 0-4771
Re; Commissioners' Court has
no authority to lease
county road machinery to
private contractor for
the purposes stated.

Your request for opinion has been received and
carefully considered by this department. We quote from
your request as follows:

"Article 2351, R. S., provides as one of
the powers of the Commissioners' Court that
they lay out and establish public roads and
highways.

"The powers of the Commissioners' Court
are only those expressly or impliedly conferred
upon them by the Constitution and Statutes of the
State. 11 Tex. Jur. 564 (Sec. 37).

"The jurisdiction of the Commissioners'
Court is limited to 'county business', but it
is held that that term should be given a broad
and liberal construction so as not to defeat the
purposes of the law. 11 Tex. Jr. 535 (Sec. 38).

"Under Section 5, Article 165a, Chapter 337,
page 771, Acts 1935, 44th Legislature, there was
conferred upon the Commissioners' Court of the

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several counties the authority to provide for the construction of improvements on lands lying within their counties in the nature of farm terraces, etc.

"Under H. B. 494, General and Special Laws of Texas, 47th Legislature, 1941, page 604, the Commissioners' Court is given the power to rent to land-owners road machinery for the construction of terraces, etc., in counties of a population from 60,000 to 80,000; and under Article 165 a-5, R. S., this same power is given in counties containing 290,000 to 320,000; and under Article 165 a-6, R. S., the same power is given to the Commissioners' Court of counties with a population of 320,000 to 360,000.

"It thus appears that the legislative construction of the powers of the Commissioners' Court is that the Commissioners' Court does not have any power to grant or bargain the use of road machinery for any private purposes, but the same can be used only in the maintenance and construction of public roads.

"During the war emergency, in the construction of airports and other public facilities, request has been made by contractors of the County Commissioners' Court for the use of road machinery belonging to the county under contract providing for adequate compensation for such use.

"It may be assumed, at least for the period of the emergency, that road machinery now on hand must last the counties until the emergency is over and that if the same is worn out on other projects other than the county road system that the county may be left without any machinery with which to work the roads.

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"I should like to ask you the following questions:

"(a) Does the County Commissioners' Court have the power to make a rental contract with a private contractor engaged in government work for the use of road machinery on such work?

"(b) Does the Commissioners' Court have the power to make a contract with a private contractor for the use of its road machinery to be shipped out of the State of Texas and used in construction work?"

Under the authorities cited in Opinions No. 0-2034 and 0-3228 of this department, copies of which are enclosed herewith for your information we answer each of your questions in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*
Wm. J. Fanning
Assistant

WJF:MBR

APPROVED AUG 28, 1942
Gerald B. Mann
ATTORNEY GENERAL OF TEXAS

