



**THE ATTORNEY GENERAL  
OF TEXAS**

Gerald C. Mann

AUSTIN 11, TEXAS

**ATTORNEY GENERAL**

Hon. George H. Cox  
State Health Officer  
Texas State Board of  
Health  
Austin, Texas

Opinion No. 0-5025  
Re: Commissioners' Courts may expend  
county funds for the purpose of col-  
lecting and disposing of garbage if  
same is deemed by the Commissioners'  
Court to be in behalf of the public  
health and sanitation of the county  
and a related matter.

Dear Sir:

Your request for opinion has been received and care-  
fully considered by this department. We quote from your re-  
quest as follows:

"The national Congress has appropriated, un-  
der the provisions of the Lanham Act, \$300,000,000  
to provide funds to relieve local municipalities  
from the financial burdens occasioned by large in-  
fluxes of population caused by the establishment  
of Army camps, Naval stations, flying fields, and  
war industries in and near these communities, for  
the construction of community utilities and to pro-  
vide sanitation for the protection of public health.  
The administration of these funds and the supervi-  
sion of construction has been placed under the  
Federal Works Agency, with regional offices in Fort  
Worth, Texas, for the southwestern region. The  
Texas State Department of Health has filed numer-  
ous applications with the Federal Works Agency for  
allotment of funds for maintenance and operation  
of sanitary projects, collection and disposal of  
garbage, sanitary pit privies, protection of small  
water supplies, and supervisory personnel. To date,  
none of these projects filed by the department for  
the foregoing purposes has received the approval  
of the Federal Works Agency and had funds allotted  
to them. The Lanham Act provides, among other  
things, that the funds appropriated may be allotted  
to municipalities and political sub divisions,  
provided the municipalities or the political sub  
divisions cannot provide the facilities without im-  
posing a heavy financial burden upon themselves.

"Some uncertainty and doubts have arisen as to  
the legality of counties participating financially

in contributing to the financing of maintenance and operation of emergency sanitation projects. We shall ask you to give us advise on the following questions:

"Article 4418-f, Vernon's Statutes, provides that it shall be lawful for the State Department of Health to accept donations and contributions to be expended in the interest of public health and the enforcement of public health laws. The commissioners court of any county shall have the authority to appropriate and expend money from the general revenues of its county for and in behalf of public health and sanitation within its county.

"Question 1. Is it legal for a Commissioners' Court to expend moneys from its general fund to provide for collection and disposal of garbage from persons living outside the limits of an incorporated city or town where the State Health Department advises that failure to do so is a menace to the health of the citizens of such county?

"Question 2. Under the same article above cited, but keeping in mind the provisions of Section 52, Article 3 of the Constitution of Texas, is it lawful for the County Commissioners' Court to expend moneys from the General Fund of the County for the purpose of constructing privies on private property where the State Board of Health advises such construction is necessary in the interests of the public health of the citizens of the County?

"The Army, Navy, and Air Corps have established training camps, air fields, Naval stations, ship building yards, and other war industries in more than seventy-five communities and areas in the State of Texas. Many of these areas formerly had sparse populations, with only sufficient community facilities to accommodate normal populations. The influxes of trainees, war workers, and civilians has thrown an excessive burden upon these communities and areas so that at the present time the facilities are inadequate and many of the communities have no finances or credit with which to provide relief. Emergencies exist in many areas. It is imperative that they be relieved at the earliest possible time. Therefore, we shall ask you to give us an answer to the foregoing questions at your earliest convenience.

". . . ."

Hon. George H. Cox, page 3 (O-5025)

Article 4418f, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

". . . The commissioners' court of any county shall have the authority to appropriate and expend money from the general revenues of its county for and in behalf of public health and sanitation within the county."

Construing the above quoted portion of the statute we said in our opinion No. O-2580A:

"No detailed direction is given as to how such general power shall be exercised but this matter is left largely within the discretion of the commissioners' court."

In opinion No. O-4725 of this department we held that the Commissioners' Court could expend funds from the general fund of the county for the purpose of establishing and supporting a prophylactic unit if the court considered same to be in behalf of the public health and sanitation of the county.

In answer to your first question it is our opinion that same should be answered in the affirmative if the Commissioners' Court deems the collection and disposal of such garbage to be in behalf of the public health and sanitation of the county.

We cannot categorically answer your second question as we do not have sufficient facts before us. However we think the Commissioners' Court would have authority to expend county funds (from the general fund of the county) for the purpose of building or providing public toilets to relieve a situation affecting the public health of the county. However, we do not think the Commissioners' Court would be authorized to build private toilets for the private use of private individuals as this would amount to a gratuity which would be condemned by Section 52 of Article 3 of our State Constitution.

Trusting that this satisfactorily answers your inquiry, we are

APPROVED DEC 19, 1942  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS  
APPROVED: OPINION COMMITTEE  
BY: RWF, CHAIRMAN

Very truly yours  
ATTORNEY GENERAL OF TEXAS  
By /s/ Wm. J. Fanning  
Wm. J. Fanning, Assistant

WJF:mp:wb