



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Tom Moore
County Attorney
Caldwell County
Lockhart, Texas

Attention: Mr. A. H. Fielder

Dear Sir:

Opinion No. 0-5449

Re: To what extent can the constitutional levy of 25¢ or the portion thereof levied, for permanent streets, etc., be used for county wide roads and for what purpose and how? And a related question.

Your letter requesting the opinion of this department on the questions stated therein reads in part as follows:

"In connection with your opinion No. 0-5422, you refer to the case of Carroll v. Williams, 202 SW 504, rendered by the Supreme Court of Texas, it would seem that the Court held that it would be legal to use funds derived from the permanent improvement tax for permanent streets within the county and finding that a maximum for 'roads and bridges', 'maintenance of public roads' and for permanent 'streets' to be 55 cents or so much thereof as levied for that purpose.

"In this connection, please answer the following questions:

"First: To what extent can the constitutional levy of 25 cents, or the portion thereof levied, for permanent 'streets', etc. be used for county wide roads and for what purposes and how?

Honorable Tom Moore, page 2

"Second: What can the funds collected from the permanent improvement tax be legally used for in detail?

"I would appreciate a detailed answer to these questions, because of conflicting opinions rendered in the past ten or twelve years which if followed would make certain funds useless.

". . . ."

Section 9, Article VIII of the State Constitution, reads in part as follows:

". . . no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25th, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation, in any year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property tax-paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And 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."

Article 2352, Vernon's Annotated Civil Statutes, pertaining to commissioners' courts, reads as follows:

"Said court shall have the power to levy and collect a tax for county purposes, not to exceed

Honorable Tom Moore, page 3

twenty-five cents on the one hundred dollars valuation, and a tax not to exceed fifteen cents on the one hundred dollars valuation to supplement the jury fund of the county, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the Constitution, September 25, A. D. 1883, and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as in the Constitution otherwise provided. They may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation, under the limitations and in the manner provided for in Article 8, Sec. 9, of the Constitution and in pursuance of the laws relating thereto."

We quote from Texas Jurisprudence, Volume 11, page 609, as follows:

"The constitution prescribes the maximum rate of taxes for general purposes, for roads and bridges, for juries, and for permanent improvements, respectively. The moneys arising from taxes levied and collected for each of the enumerated purposes are constitutional funds; and the commissioners' court has no power to transfer money from one fund to another, or to expend, for one purpose, tax money raised ostensibly for another purpose.

"The immediate purpose of the provision is to limit the amount of taxes that may be raised for these several purposes, respectively; but it is also designed to inhibit excessive expenditures for any such purpose, and to require that any and all moneys raised by taxation for any purpose shall be applied to that particular purpose and to no other.

!"

Honorable Tom Moore, page 4

We do not think that the case of Carroll v. Williams, 202 S. W. 504, holds as stated in the first paragraph of your letter quoted above. It is our opinion that Article VIII, Section 9, of the Constitution, authorizes counties to levy 15¢ on the \$100.00 valuation for roads and bridges, and an additional tax may be levied and collected for the further maintenance of public roads, provided that a majority of the qualified property tax-paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed 15¢ on the \$100.00 valuation of the property subject to taxation in such county, and 25¢ on the \$100.00 valuation for streets and other permanent improvements, but does not authorize a levy of 55¢ on the \$100.00 valuation for roads not within the corporate limits of a city or town. (Williams v. Carroll, 182 S. W. 29.)

In answer to your first question, you are respectfully advised that it is our opinion that no part of the permanent improvement fund can be legally expended for roads not within the corporate limits of a city or town.

Your second question is too general to be answered in detail. We express no opinion concerning this question other than to point out that the provisions of the Constitution and Article 2352 heretofore quoted authorize the levying and collecting of a tax for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed 25¢ on the \$100.00 valuation in any one year. It would naturally follow that the county could legally expend the permanent improvement fund for the enumerated purposes heretofore mentioned. In the event you have any particular expenditure in mind and desire our opinion as to whether or not such expenditure can legally be made out of the permanent improvement fund, we will be glad to give the same our consideration when presented to us.

APPROVED AUG 3, 1948

[Handwritten Signature]
 DEANE ASSISTANT
 ATTORNEY GENERAL

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *[Handwritten Signature]*

Ardell Williams
 Assistant

AW:db

