



"WHEREAS, said Court finds that Pritchard and Abbott, a partnership of Fort Worth, Texas, are skilled in such matters and have scientific and technical knowledge in respect to the appraising and valuing of such properties and many years experience in the matter of appraising and valuing such properties; and,

"WHEREAS, Pritchard and Abbott, have proposed to said Commissioners' Court of HUTCHINSON County that they will gather and compile information relating to the value of oil and gas and public utility properties as of January 1, 1944, and make said information completely available to said Court, to be used by it as it may see fit in determining what values should be assigned to said properties properly coming before it for consideration; and will charge for their services a sum equal to FOUR (4¢) Cents on each One Hundred Dollars valuation as finally ascertained and determined for HUTCHINSON County of oil and public utility properties, or other mineral interests.

"IT IS THEREFORE AGREED by and between Hutchinson County, Texas, acting herein by and through its Commissioners' Court, Party of the First Part, and Pritchard and Abbott, of Tarrant County, Texas, Parties of the Second Part as follows:

"Parties of the Second Part agree to compile a complete list of the record owners of all oil and gas producing properties wherever situated and located in Hutchinson County, Texas, and all undeveloped leases and royalty interests adjacent thereto, as of January 1, 1944, said compilation and record to show the particular interest or interests therein owned; and also a complete list of all public utility properties located in said County as of January 1, 1944.

"Parties of the Second Part also agree to secure and make available for the use of Party of the First Part information showing the values of said properties to be considered by Party of the First Part as it may deem fit in determining the proper values for tax assessment purposes for 1944, to be assigned to such of said properties as

may come before the Party of the First Part sitting as a Board of Equalization for consideration upon renditions made by the owners thereof, or upon renditions made by the Tax Assessor where the owner, or owners, fail or refuse to render the same.

"FOR AND IN CONSIDERATION of the skilled services, technical knowledge and experience of Parties of the Second Part in the performance of the obligations devolving upon them hereunder, and in consideration of the information given and assistance furnished by them to Party of the First Part in undertaking to value and equalize the value of the said properties properly coming before it for consideration at its equalization hearings in the year 1944, Party of the First Part agrees and obligates itself to compensate Parties of the second part as follows:

"FOR THE SERVICES HEREIN AGREED to be performed Second Party shall receive the said sum equal to FOUR Cents on each One Hundred Dollars valuation on all oil properties, mineral interests, and public utility properties, ascertained and determined by the Commissioners' Court for tax purposes for Hutchinson County for the year 1944, to be paid out of the General Fund of Hutchinson County.

"IT IS FURTHER AGREED AND UNDERSTOOD by both Parties that Hutchinson County, Texas, will issue, or cause to be issued to Pritchard and Abbott warrants drawn against the General Fund of said Hutchinson County, Texas, and payable out of the current revenues of 1944.

"PARTY OF THE FIRST PART hereby specially contracts and obligates itself to, at any time same may become necessary, pass and enter of record such orders as may be proper and necessary to legalize and facilitate the payment of all sums due Party of the Second Part.

"SAID PRITCHARD AND ABBOTT, further agree that in no way will the said Hutchinson County be obligated to said Prichard and Abbott, or their assistants, for salaries, expense, or material, except as above stated.

"WITNESS our hands in duplicate this the  
\_\_\_\_\_ day of \_\_\_\_\_, A. D., 194\_\_.

"COUNTY OF HUTCHINSON  
Party of the First Part

By \_\_\_\_\_  
County Judge

\_\_\_\_\_  
Commissioner,  
Precinct #1

\_\_\_\_\_  
Commissioner, Precinct #2

\_\_\_\_\_  
Commissioner  
Precinct #3

\_\_\_\_\_  
Commissioner Precinct #4

"ATTEST:

\_\_\_\_\_  
County Clerk,  
Hutchinson County,  
Texas

PRITCHARD & ABBOTT  
Parties of the Second Part

By \_\_\_\_\_"

The question involved in this opinion is the  
validity of the foregoing contract.

The authority of the Commissioners' Court of  
Hutchinson County as the governing body thereof to make  
contracts in its behalf is strictly limited to that con-  
ferred either expressly or by fair and necessary implica-  
tion by the constitution and laws of this State. (See  
Tex. Jur., Vol. 11, pp. 630-634; 15 C.J., pp. 540, 541,  
Section 233; Foster v. City of Waco, 255 S.W. 1104; Von  
Rosenberg v. Lovett, 173 S.W. 580; Roper v. Hall, 280 S.W.  
298 and authorities cited therein)

We have failed to find any statute expressly au-  
thorizing the Commissioners' Court of Hutchinson County  
to make a contract such as the one under consideration.  
If the Commissioners' Court of Hutchinson County has the  
power to make the contract under consideration, such power  
must come within the implied power possessed by the Commis-  
sioners' Court of said County.

The authority of a county commissioners court to  
make a contract of the character of the one inquired about

in your letter seems to have been settled by the court in the case of Roper v. Hall, supra; in this case the Waco Court of Civil Appeals held, in effect, that the county commissioners' court had the implied authority to employ valuation experts to aid and assist the commissioners' court in discharging its duties when sitting as a Board of Equalization in the matter of the fixing of valuations on oil and gas properties for taxation purposes.

The opinion in the foregoing case has also been followed by the El Paso Court of Civil Appeals in the case of Federal Royalty Company v. State, 42 S.W. (2d) 670.

In the cases of Von Rosenberg v. Lovett, Roper v. Hall, and Federal Royalty Company v. State, cited above, it was held that the authority of the commissioners' court to enter into such contract was derived by necessary implication from the language of the then existing statutes. There is dictum in the case of Marquart v. Harris County, 117 S.W. (2d) 494, to the effect that the commissioners' court has the authority to make provisions for the valuation of property which the tax assessor is incapable of valuing, and that such action does not operate to vest in others the duties which are by law vested in such assessor.

As a matter of law it is difficult to determine whether the contract here involved is one regarding delinquent taxes. However, it is apparent that it is not the intention or the effect of the contract that Pritchard and Abbott should perform the duties imposed by law on any of the county officers concerned. On the contrary, it does appear that its purpose is to merely aid such officers in the effective performance of their respective duties. That is, to aid the commissioners' court when sitting as a Board of Equalization.

We have carefully considered the cases of White v. McGill, 114 S.W. (2d) 860; Easterwood v. Henderson County, 62 S.W.(2d) 85; Aldrich v. Dallas County, 167 S.W.(2d) 560; Sylva Sanders Company v. Scurry, 77 S.W.(2d) 709 and the authorities cited in said cases in connection with the matters under consideration. Apparently the contracts involved in these opinions were in connection with the collection of delinquent taxes. We do not think that the contracts involved in these cases were the same kind or type of contracts as the contract under consideration.

Assuming for the purpose of this opinion that the tax assessor-collector and the commissioners' court are not legally

qualified to render the services contracted for and that the firm of Pritchard & Abbott performs no duties imposed by law upon any of the officers concerned, then, the commissioners' court is authorized to make a contract for the valuation of oil and gas properties which the tax assessor-collector and commissioners' court is incapable of valuing, and that such action does not operate to vest in others the duties which are by law vested in such county officials. Stated another way, it is our opinion that the commissioners' court may validly employ skilled experts to value for taxation purposes property in special instances where technical equipment, training and skill is required, providing proper provision has been made in the county's budget to pay for such services.

In view of the foregoing authorities, it is our opinion that the contract quoted above is valid and that the Commissioners' Court has the legal authority to make and execute such contract.

The necessity of making and execution of the contract must be determined by the Commissioners' Court. This department has no authority to pass upon the question as to the necessity of the contract, this matter is wholly within the discretion of said court.

It should be borne in mind that the claims of Pritchard and Abbott must be registered in compliance with Article 1625, Vernon's Annotated Civil Statutes, and that the firm of Pritchard and Abbott have no priority of claim by reason of said contract. (See the cases of Wilkinson v. Franklin County, 94 S.W.(2d) 1190, and Clark and Courts v. Crawford, et al. 161 S.W.(2d) 148.

APPROVED MAR 18, 1944  
/s/ Grover Sellers  
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE  
BY GCB, Chairman

AW:ncd:wb

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ C. F. Gibson  
C. F. Gibson, Assistant

/s/ Ardell Williams  
Ardell Williams, Assistant