



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Shelby Long
County Attorney
Jefferson County
Beaumont, Texas

Dear Sir:

Opinion No. 0-6126
Re: Constitutionality of Senate Bill
No. 69 and House Bill No. 431,
Special Laws, Regular Session,
32nd Leg., 1911, being special
road laws for Jefferson County.

We acknowledge your opinion request which reads
as follows:

"Please furnish an opinion as to the
constitutionality of the section referred to which
refers to the compensation of Five (\$5.00) Dollars
daily for services actually performed by county
commissioner when acting as road commissioner, and
performing the duties imposed upon him by law or
by the Commissioners' Court.

"In our county, the several commissioners
have the usual road foremen in charge of the differ-
ent work on the roads and the bridges, and have
tendered a claim to the Auditor for compensation of
Five (\$5.00) Dollars daily as is provided in section
3. Our question involves the right of the commissioners
to receive this additional compensation over and above
their usual compensation paid them as county com-
missioners.

"The county commissioners of Jefferson county
were designated and created road commissioners by Senate
Bill No. 69 of the 32nd Legislature, 1911, as well as
the Bill above referred to, House Bill No. 431, and it

Hon. Shelby Long - Page 2

is in this capacity that they base their claim for Five (\$5.00) Dollars per day on actual services performed as designated in section 3 of House Bill No. 431."

The acts which you refer to are Senate Bill No. 69, Chapter 7, page 50 and House Bill No. 431, Chapter 24, page 167, Special and Local Laws, Regular Session, 32nd Legislature, 1911. The first act S. B. No. 69 merely constitutes each member of the Commissioners' Court a road commissioner of his respective district. The second act H. B. No. 431 contains the provision for payment of \$5.00 a day to each county commissioner, when acting as road commissioner "for services actually performed" not to exceed one hundred (\$100.00) per month, which shall be paid out of the road and bridge fund, when the account shall have been approved by the Commissioners' Court. We have heretofore held that House Bill No. 431 was constitutional. See Opinion No. 0-3992 issued by this department October 7, 1941, copy of which is attached.

In the case of Quinn v. Johnson, County Judge, et al, 91 S. W. (2d) 499 (1936), writ of error dismissed, the Beaumont Court of Civil Appeals held that House Bill No. 528, Chapter 161, General and Special Laws, 40th Legislature (1940), supplements House Bill No. 431, Chapter 24, Acts of 32nd Legislature (1911) by providing that the Commissioners' Court of Jefferson County may purchase automobiles for use of county commissioners when acting as road supervisors. The court in that opinion upheld the validity of the supplementary act authorizing the purchase of automobiles and in effect held that both of the special acts were constitutional under Article 8, Section 9 of the Texas Constitution, which provides that "the Legislature may pass local laws for the maintenance of the public roads and highway, without the local notice required for special or local laws." The Court said:

"Under the authority of the above cases, we have no doubt that the special Jefferson county road law assailed in this suit is constitutional. It purports to deal only with the matter of providing transportation for the limited use of the members of the commissioners' court in maintaining and keeping open an efficient system of roads and while engaged in supervising the highway system of the county for such purpose. The special road law of Jefferson county, of which the particular act in question is but supplementary, imposes numerous duties upon the commissioners as supervisors of roads which are

not imposed upon them as commissioners by the general law. The Legislature, in passing the special act in question, recognized that certain peculiar conditions exist within Jefferson county which justify the county in furnishing modes of conveyance to the commissioners as an aid to them in discharging efficiently their duties as road supervisors."

The Beaumont Court in reaching its conclusion as to the constitutionality of House Bill No. 431, Chapter 24, Acts of 32nd Legislature (1911) relied upon the case of Crow, et al, vs. Tinner, 47 S. W. (2d) 391, by the Waco Court of Civil Appeals, which was adopted by the Supreme Court in Tinner v. Crow, 124 Tex. 368, 78 S. W. (2d) 588. In writing the opinion for the Waco Court, Justice Alexander, who is now Chief Justice of the Supreme Court, held constitutional a special law for Hill County which authorized the Commissioners' Court to reimburse county commissioners from the Road and Bridge fund for all expenses incurred by them in operating their private automobiles when inspecting the roads of the county.

The decisions above mentioned are not at variance with the opinion of the El Paso Court of Civil Appeals in Jameson v. Smith, 161 S. W. (2d) 520. The Act (Art. 2350m, note, Vernon's Annotated Civil Statutes) involved in that case was a so-called "bracket law" which was passed as a general law and not as a special road law and it imposed no new or added duties on the Commissioners for which the Legislature was authorized to provide reimbursement or compensation. The special road laws for Jefferson County which you inquire about do impose added and new duties on the Commissioners which are not imposed by general law. See our Opinion No. O-5328, relating to a special road law for Galveston County, copy of which is attached hereto.

You are, therefore, advised that both of the special acts inquired about are constitutional.

Yours very truly

ATTORNEY GENERAL OF TEXAS

Handwritten signature of Brown Bell

Handwritten signature of Fagan Dickson
By Fagan Dickson
Assistant

FD:BT

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CHAIR