



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Mrs. Peyton Burke
County Auditor
Falls County
Marlin, Texas

Dear Mrs. Burke:

Opinion No. 0-6831

Re: Order of payment of registered scrip warrants issued against various precinct funds, when the county road and bridge fund has been allocated to the various precincts on a percentage basis.

We are in receipt of your letter of recent date requesting the opinion of this department on the above stated matter. We quote from your letter as follows:

"By order of the Commissioners Court of Falls County the income from taxes for the Road and Bridge Fund is divided on a percentage basis and the receipts so listed in the ledger. The budget of expenditures is set up on the basis of income for that particular precinct and expenditures are listed in the ledger separately for each precinct. At the present time, Precinct #1 has scrip warrants outstanding totaling \$500.00; Precinct #2 has \$24,000.00 against its fund; Precinct #3 and Precinct #4 have issued \$60,000.00 and \$42,000.00, respectively. The warrants of each precinct are paid according to number as money is available in the fund of that particular precinct. This means that the scrip warrants outstanding of Precinct #1 will be paid ahead of those of the other precincts issued on the same date. Scrip warrants of Precinct #2 will be paid before those of Precinct #4 and those drawn against Precinct #4 will be paid before those drawn against Precinct #3.

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"The question on which I would like an opinion is this: Is it legal for a county to pay the scrip warrants outstanding of one precinct ahead of the scrip warrants outstanding of another precinct in the case of Falls County; i.e., when the Road and Bridge income is allocated to the four precincts on a percentage basis?"

Article 1625, Revised Civil Statutes, 1925, provides:

"Each county treasurer shall keep a well-bound book in which he shall register all claims against his county in the order of presentation, and if more than one is presented at the same time he shall register them in the order of their date. He shall pay no such claim or any part thereof, nor shall the same, or any part thereof, be received by any officer in payment of any indebtedness to the county, until it has been duly registered in accordance with the provisions of this title. All claims in each class shall be paid in the order in which they are registered."

Art. 1626, R. C. S., provides:

"Claims against a county shall be registered in three classes, as follows:

"1. All jury scrip and scrip issued for feeding jurors.

"2. All scrip issued under the provisions of the road law or for work done on roads and bridges.

"3. All the general indebtedness of the county, including feeding and guarding prisoners, and paupers' claims."

Art. 1627, R. C. S., provides:

"Said treasurer shall enter each claim in the register, stating the class to which it belongs, the name of the payee, the amount, the date of the claim, the date of registration, the number of such claim, by what authority issued, and for what service the same was issued, and shall write on the face of the claim its registration number, the word 'registered,' the date of such registration, and shall sign his name officially thereto."

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Art. 6740, R. C. S., provides:

"The commissioners court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct. Money used in building permanent roads shall first be used only on first or second-class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable and having the greatest bonus offered by the citizens of money, labor or other property."

Article 6675a-10, Vernon's Annotated Civil Statutes, in part, provides:

". . . None of the monies (motor vehicle registration fees) so placed to the credit of the Road and Bridge Fund of a county shall be used to pay the salary or compensation of any County Judge or County Commissioner, but all said monies shall be used for the construction and maintenance of lateral roads in such county under the supervision of the County Engineer, if there be one, and if there is no such engineer, then the County Commissioners' Court shall have authority to command the services of the Division Engineer of the State Highway Department for the purpose of supervising the construction and surveying of lateral roads in their respective counties. All funds allocated to the counties by the provisions of this Act (Arts. 6675a-1 to 6675a-14; P.C. Art. 807a) may be used by the counties in the payment of obligations, if any, issued and incurred in the construction or the improvement of all roads, including State Highways of such counties and districts therein; or the improvement of the roads comprising the County Road system." (Parenthetical matter ours)

The commissioners' court is authorized to allocate the road and bridge fund among the various commissioners' precincts, subject to the provisions of Article 6740 and 6675a-10, supra, (Shivers v. Stovall, 75 S. W. (2d) 276; affirmed 129 T. 256, 103 S. W. (2d) 363), and we presume that the allocations and

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expenditures of the road and bridge fund, mentioned in your letter, were made from time to time in compliance with the provisions of said articles. We understand from your inquiry that, on the basis of the aforementioned allocation of the road and bridge fund on said percentage basis to the various precincts, the commissioners' court authorized the issuance of scrip warrants for claims incurred against the respective precinct funds. We understand further that the scrip warrants issued against each precinct fund were registered in numerical order, and, as funds become available in a particular precinct fund, under the above mentioned allocation, the scrip warrants against that particular precinct fund are paid in the order of their registration.

With reference to the matter of the proper order in which warrants drawn against county funds are to be paid, in the case of *Wilkinson v. Franklin County*, 94 S. W. (2d) 1190, the Court said:

"...Article 1625, R. S., clearly denotes the order in which warrants drawn against the county treasurer are to be paid, and amounts to an appropriation of the funds in the county treasury to the payment of all warrants legally drawn against the several classes of funds in the order of their registration. . ."

In Opinion No. O-4552, this department passed upon a question involving the authority of a commissioners' court to transfer funds of certain precincts to another precinct fund, when there were registered scrip warrants outstanding against the particular precinct funds from which said transfer was to be made. We quote from said opinion as follows:

"The holders of the outstanding scrip against Precincts Nos. 1, 2 and 3 have vested interests in the funds of said precincts to the full extent of claims as evidenced by such scrip, and the Commissioners' Court of Limestone County has no authority to decree a preference, thereby impairing such vested rights of creditors of Precincts Nos. 1, 2 and 3 by paying out the funds of said precincts to Precinct No. 4."

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In view of the foregoing and in view of the facts submitted, it is our opinion that the holder of a registered scrip warrant against a particular precinct has a vested interest in the funds legally allocated to that particular precinct to the full extent of claims as evidenced by such scrip warrant. It is our further opinion that the vested rights of the creditors of a particular precinct may not be impaired, and that the registered scrip warrants against a particular precinct fund should be paid in the order of the registration of warrants issued against that particular precinct fund, even though warrants issued on a given date against one particular precinct fund may be paid before warrants drawn on the same date against a different precinct fund become eligible for payment.

We trust that the foregoing satisfactorily answers your inquiry.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

J. A. Ellis
J. A. Ellis
Assistant

JAE:LJ

Carroll B. ...

