



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
~~XXXXXXXXXXXX~~  
ATTORNEY GENERAL

Honorable W. J. Townsend  
County Attorney  
Angeline County  
Lufkin, Texas

Opinion No. 0-7541

Re: Where work on a public road is to be paid for by the property owners, should the payment be made direct or should the money be deposited to the Road and Bridge Fund of the County Treasury and paid out in the usual manner?

Dear Sir:

We are in receipt of your request for an opinion of December 2, 1946. We quote the pertinent parts of the letter which you enclosed to us from Honorable W. L. Evans, County Judge, Angeline County, Texas, as follows:

"Several months ago, in Precinct No. 1, Angeline County, Texas, the road and bridge fund was depleted and the County Commissioner was unable to carry on the usual and ordinary work on the county roads in the precinct.

"On one of these public roads, the property owners advised the Commissioners' Court that they were willing to put up sufficient money for the work. This was agreed to by the Commissioners' Court and the County Commissioner took his equipment and did the work on this public road.

"The property owners are willing to pay for the cost of the work, but the question is how should the payment be made. Should the money be deposited in the County Treasury to Road and Bridge Fund of Precinct No. 1 and

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paid out upon claims approved by the Commissioners' Court and the County Auditor in the usual manner, or would the property owners be authorized to pay the money direct to the persons furnishing the labor and material necessary for the work?"

There can be no question but what the county is required and authorized to maintain the county roads within the county.

Under the Texas Constitution, Article XI, counties are municipal corporations and political subdivisions of the State. City of Abilene vs. State, 113 S. W. (2d) 631, error dismissed.

Under their general powers "to acquire and hold property", it has been held that a municipal corporation may accept a gift of money from the United States government. Iowa-Southern Utilities Company vs. Lamoni, 11 Fed. Sup. 581.

In the case of State Ex Rel Melrose Sewer District vs. Smith, 120 S. W. (2d) 1102, it was held that a sewer district could accept donations such as federal grants which would enable them to construct a system costing more than its debt limit.

It is our opinion that it would not be improper for the Commissioners' Court to accept the contribution of the property owners along a public road to be used for the repair of the county road pursuant to an agreement between the property owners and the county.

However, all expenditures of county funds by the Commissioners' Court is governed by the budget law as set forth in Article 69a-11, V.A.C.S., which provides in part as follows:

"When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court, shall be filed with the Clerk of the County Court, and taxes levied only in accordance therewith and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the Court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention,

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have been included in the original budget, may from time to time be authorized by the Court as amendments to the original budget."

We suggest the proper way to handle the proposed donation or contribution is to have the property owners tender their contributions to the Commissioners' Court for the sole purpose of paying the necessary expenses for the usual and ordinary work on said county roads and to expend the monies in accordance with the trust agreement. The money should be deposited in the county treasury to the credit of a trust fund which may be called "Special Road Trust Fund for Precinct No. 1". The County Treasurer would then draw on this trust fund from the County Depository under the order of the Commissioners' Court as the expenses occurred.

Since the amount contributed is not derived from taxes, the expenditures by the county under the plan suggested will be in strict compliance with the budget and the law.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED  
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