



**OFFICE OF  
THE ATTORNEY GENERAL**

**AUSTIN, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

February 17, 1947

Hon. N. F. Foster  
County Auditor  
Smith County  
Tyler, Texas

Opinion No. V-23

Re: Whether the Commissioners' Court of Smith County may legally expend county funds to build a dwelling for the use and occupancy of the county engineer.

Dear Sir:

Your letter of January 20, 1947, in which you requested an opinion of this Department is as follows:

"Smith County employs a County Engineer and included in his many duties is the supervision of the County Garage and Warehouse, which services and maintains the Road Machinery and Equipment for the County Road System.

"Please advise if the Commissioners Court of Smith County may legally expend County Funds to build a dwelling for the use and occupancy of the County Engineer. This dwelling is to be built on a portion of the County property upon which the County Garage and Warehouse is located, or upon property to be purchased adjacent to said property.

"If your opinion shows this to be a legal expenditure, from which fund should it be made, the Permanent Improvement or the Road and Bridge?"

On January 28, 1947, this Department received additional facts relating to the same matter from the Honorable Arch T. Power, County Judge of Smith County, which are as follows:

"As you will recall from our conversation in Austin a few days ago, I promised to give you a full statement of facts concerning the request for an opinion Submitted by N. F. Foster, County Auditor of Smith County, with reference to the erection of a house for a keeper or a watchman.

"Smith County has purchased some three acres of land and is in the process of erecting a county garage and warehouse for general operations, countywide. The mechanical work upon all of the equipment of the County will be done in this garage and all of the supplies will be stored there. As a matter of fact the whole Road and Bridge Department of the County will operate out of these headquarters. There will be stored on the yard supplies of various kinds and a large part of the machinery and most of the trucks belonging to the County will be stored there each night.

"The Commissioners Court had in mind from the beginning to erect on the premises or immediately adjacent to them on an additional plot of ground, a cottage to be occupied by some employee of the general headquarters, so that they would be available for contact at any time, as well as to watch and protect the properties there situated.

"Now, owing to the terrific housing situation, we had decided that we would permit the County Engineer who is in complete charge of all of these operations, to occupy such cottage until he made more suitable arrangements, and then perhaps the storekeeper or warehouseman would occupy such cottage.

"It seems to me that such an arrangement purely for the protection and conservation of such property, together with the fact that the occupant of such cottage would be constantly on the job or subject to call, would be in line with the operation of such set-up as contemplated and certainly should be a legal expenditure out of the Permanent Improvement Fund."

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

"The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five (35) cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five (25) cents for city or county purposes, and not exceeding fifteen (15) cents for roads and bridges, and not exceeding fifteen (15) cents to pay jurors, on the one hundred dollars valu-

ation, except for the payment of debts incurred prior to the adoption of the Amendment September 25, 1883; and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed twenty-five (25) cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; provided, however, that the Commissioners Court in any county may re-allocate the foregoing county taxes by changing the rates provided for any of the foregoing purposes by either increasing or decreasing the same, but in no event shall the total of said foregoing county taxes exceed eighty (80) cents on the one hundred dollars valuation, in any one year; provided further, that before the said Commissioners Court may make such re-allocations and changes in said county taxes that the same shall be submitted to the qualified property tax paying voters of such county at a general or special election, and shall be approved by a majority of the qualified property tax paying voters, voting in such election; and, provided further, that if and when such re-allocations and changes in the aforesaid county taxes have been approved by the qualified property tax paying voters of any county, as herein provided, such re-allocations and changes shall remain in force and effect for a period of six (6) years from the date of the election at which the same shall be approved, unless the same again shall have been changed by a majority vote of the qualified property tax paying voters of such county, voting on the proposition, after submission by the Commissioners Court at a general or special election for that purpose; 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 (15) 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. This section shall not be construed as a limitation of powers delegated to counties, cities or towns by any other section or sections of this Constitution. (Sec. 9, Art.

VIII, adopted election Nov. 7, 1944.)"

Our State Constitution, Article 5, Section 18, provides in part as follows:

"The county commissioners so chosen, with the county judge, as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed."

Article 2351, V.A.C.S., sets forth the following powers and duties of the County Commissioners' Court:

"Sec. 7. Provide and keep in repair court-houses, jails and all necessary public buildings."

Article 2352, V.A.C.S., refers to the tax for "erection of public buildings" by the County Commissioners' Court.

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

Justice Fly in the case of Edwards County vs. Jennings, reported in 33 S.W. 585, had this to say:

"Counties are political or civil divisions of the State, created for the purpose of bringing government home to the people, and supplying the neces-

sary means for executing the wishes of the people, and bringing into exercise the machinery necessary to the enforcement of local government. Counties, being component parts of the State, have no powers or duties except those clearly set forth and defined in the Constitution and statutes."

"The statutes have clearly defined the powers, prescribed the duties and imposed the liabilities of the Commissioners' Court, the medium through which the different counties act, and from those statutes must come all the authority vested in the county." 11 Tex. Jur. 563.

The same ruling was held in Moore vs. McLennan County, et al, 275 S.W. 478; El Paso County vs. Elam, 106 S.W. (2) 393, and in many other cases too numerous to cite.

From the constitutional provision and the statutes quoted above, we find that the County Commissioners' Courts have the power to provide and keep in repair all necessary public buildings. We quote from Tex. Jur., Vol. 34, page 2, as follows:

"Public buildings is a term ordinarily used to designate such structures as the capitol on the capitol ground at Austin including the executive mansion, the various State asylums, all University buildings erected by the State, courthouses, jails and other buildings held for public use by any department or branch of government, State, county or municipal."

Construing Section 9 of Article VIII of the Texas Constitution and Section 7 of Article 2351, supra, in conjunction with all the other statutes relating to the powers of the County Commissioners' Court and in the light of the necessity of the Court acting within the sphere of its powers and duties conferred upon it, it is the opinion of this Department that the term "public buildings" means "necessary public buildings" and that "necessary public buildings" mean public buildings necessary for the conduct of county business.

Bearing in mind the foregoing definitions, the above quoted provision of the Constitution and statutes, and the foregoing decisions of the Courts of this State, and, furthermore, since there is no statute in this State expressly authorizing a county to construct a private dwelling as mentioned in your request, it is the opinion of this Department that the Commissioners' Court of Smith

County cannot legally build a private dwelling or cottage for the County Engineer, the Storekeeper or Warehouseman or any other county employee.

SUMMARY

The Commissioners' Court of Smith County cannot legally expend any of the Permanent Improvement Funds of the county for building a private dwelling or cottage for the County Engineer, the Storekeeper or Warehouseman, or any other county employee. Article 2351, V.A. C.S.; Edwards County vs. Jennings, 33 S.W. 585; 11 Tex. Jur. 563; Moore vs. McLennan County, et al, 275 S.W. 478; El Paso County vs. Elam 106 S.W. (2) 393.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By   
Bruce Allen  
Assistant

APPROVED FEB. 17, 1947

  
ATTORNEY GENERAL

BA:djm:jrb

Approved Opinion Committee  
By BWB, Chairman