



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

June 2, 1947

Hon. Sam Dollahite  
County Attorney  
Falls County  
Marlin, Texas

Opinion No. V-230

Re: Under constitutional amendment of Article VIII, Sec. 9, known as "Reallocation of County Funds Amendment," may time warrants be issued to mature more than six years from the date of reallocation election, and related questions.

Dear Sir:

Your request for an opinion from this Department on the above subject matter is as follows:

"At the request of the Commissioners' Court of Falls County, I respectfully request your official opinion on the questions which are hereinafter stated.

"Acting pursuant to the 1944 amendment to Section 9 of Article VIII of the Constitution of Texas, an election was held in Falls County on the 5th day of November, 1946 to reallocate county taxes authorized by that section. In this re-allocation, the first 15¢ road and bridge tax was increased to 35¢.

"During the war years, the county was unable properly to maintain the county roads and to make improvements which are badly needed. The cost of making necessary repairs and improvements to the county roads is substantially more than the anticipated income of the county for road and bridge purposes during the current year. The Commis-

sioners' Court, therefore, desires to issue time warrants for the purchase of necessary road machinery and materials and to pay labor bills for constructing and making capital repairs to various county roads and bridges.

"The former 15¢ limitation on road and bridge taxes has been removed by the reallocation election and the county has the right to levy a 35¢ tax for this purpose for a period of six years from the date of the election.

"The first question upon which we would like to have your valued opinion is: May the Commissioners' Court of Falls County issue road and bridge time warrants under the terms of the Bond and Warrant Law of 1931 and levy a tax of not to exceed 35¢ on the \$100 valuation for a period of six years from the date of said re-allocation election, provided that the remaining income to the county for road and bridge purposes will be sufficient to pay other reasonably anticipated normal expenses of maintaining the county roads?

"The second question is: May such warrants be issued to mature beyond said six year period provided the total debt service requirements for said warrants, together with debt service requirements on all other road and bridge indebtedness, will not be more than can be serviced from a 15¢ tax on and after the end of such six year period?

"If your answer to the first question is in the negative, then: What rate of tax may be levied during such six year period for the purpose of paying principal and interest on road and bridge time warrants?"

Article VIII, Section 9, of the Constitution of the State of Texas, as amended November, 1944, provides 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 valuation, 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, water-works 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." (Emphasis ours)

In construing the above constitutional amendment in connection with a similar question to the one now before us, it was held in our Opinion No. 0-6863, a copy of which is enclosed, that the county could issue bonds to mature more than six years from the date of reallocation election provided that the bonds could be serviced with its increase in tax assessment for such six-year period and the old constitutional limit of 15¢ thereafter. Opinion No. 6863 based its conclusions on the fact that if the people of the county voted the bond issue, the increased tax assessment would become obligated for a six-year period from the date of the reallocation election and the county would not be authorized to decrease the levy since such an act would be an infringement of the contract.

The question now before us is whether or not the holding in Opinion No. 0-6863 is applicable to the issuance of time warrants. Time warrants are issued by the Commissioners' Court, whereas bonds are only issued upon a vote of the property tax paying voters of the county. In other words, when bonds are issued, the increased tax assessment becomes obligated by the property tax paying voters of the county, but when time warrants are issued, the increased tax assessment becomes obligated by the Commissioners' Court.

We are therefore confronted with the case of *San Saba v. McCraw*, 108 S.W. (2d) 200, wherein the Supreme Court held S.B. 303, Acts of the 45th Legislature (an Act authorizing the Commissioners' Court on its own motion and without a vote of the property tax paying voters to issue funding bonds) unconstitutional. We quote the following from the

above mentioned case:

"In the case at bar the qualified tax-paying voters of San Saba County voted under a law that secured to them the right to vote off such tax in two years, and, further, such voters voted under a law that guaranteed to them that the proceeds of such tax could never be charged with a bond issue. This law was passed for the purpose of putting into effect the constitutional provision authorizing such tax. Now, after such tax is voted, the Legislature, without the consent of the voters, has attempted to impair and destroy their rights existing at the time of the vote. To our minds such a legislative act not only violates the very constitutional provision authorizing the tax to be voted, but violates section 16 of article 1 of our State Constitution as well. *David v. Timon, supra.*" (Underscoring ours)

It will be noted that the foregoing case based its conclusion on the fact that the property tax paying voters of San Saba voted under a law that secured to them the right to vote off such tax in two years and, therefore, the Legislature could not destroy their rights existing at the time of the vote. Therefore, if Section 9 of Article VIII guarantees to the property tax paying voters the right to vote off a tax levied under the reallocation election within the six-year period, the Commissioners' Court would not be authorized to issue time warrants once the reallocation has been made under the amendment. It is our opinion, however, that voters do not have the inherent right to vote off the reallocation prior to the end of the six-year term because only the Commissioners' Court is authorized to call an election for the reallocation of funds under said amendment. Once the Commissioners' Court has issued time warrants that are to be serviced out of the tax assessment levied under the reallocation election, the Commissioners' Court could not call an election within the six-year period to decrease such taxes, for such an action would constitute an infringement of the county's contract. Furthermore, it was held in the case of *Patton v. Concho County*, 196 S.W. 2d 833, that the county could purchase road machinery without advertising for bids. Since the above mentioned case was decided subsequent to the constitutional amendment, the Court seems to recognize that the county has the power to issue time warrants under said amendment.

Therefore, it is the opinion of this Department that

the Commissioners' Court of Falls County is authorized to issue Road and Bridge time warrants to mature during a six-year period from the date of the reallocation election, provided the time warrants, along with the other indebtedness, can be serviced within its increased tax assessment for a six-year period from the date of the reallocation election.

In answer to your second question, it is our opinion that the Commissioners' Court is authorized to issue time warrants to mature beyond said six-year period provided said time warrants can be serviced within its increased tax assessment for such six-year period and the old constitutional limit of 15¢ thereafter.

SUMMARY

Under the amendment to Sec. 9 of Art. VIII, known as the "Reallocation of County Funds Amendment," the Commissioners' Court of Falls County is authorized to issue road and bridge time warrants to mature beyond the six-year period from the date of the reallocation election, provided the time warrants, along with the other indebtedness, can be serviced within the increased tax assessment for a six-year period from the date of the reallocation election and the old constitutional limit of 15¢ thereafter.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *John Reeves*  
John Reeves  
Assistant

JR:djm

Enclosure

This opinion has been considered and approved in limited conference.

APPROVED:

*Pace Daniel*  
ATTORNEY GENERAL