



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

June 28, 1947

Hon. James F. Houlihan,  
County Auditor,  
Orange County,  
Orange, Texas

Opinion No. V-271

Re: Authority of Orange County to issue time warrants against the road and bridge fund.

Dear Mr. Houlihan:

Your request for an opinion of this department is substantially as follows:

"Prior to the date of this request, it had been the custom of the Commissioners' Court to pass an order, which said order was recorded in the Minutes of said Court, wherein the Commissioner of some particular precinct was authorized to issue a scrip warrant against his precinct funds payable in one or two or more years after date, with or without interest, whereupon the County Clerk would issue an ordinary scrip warrant directed to the County Treasurer, and in the lower left hand corner of said scrip warrant or elsewhere in the body of said scrip warrant would write in the words 'Payable on or before April 10th, 1948' or similar dates, followed by the words 'With interest @ \_\_\_% per annum'. Sometimes these warrants were payable to a bank and the Commissioner would take them to the bank, discount them, and have the proceeds deposited to his precinct account, and thereafter current warrants would be drawn against these funds to pay claims allowed for the ordinary and necessary expenses incurred in the construction and maintenance of roads and bridges in that precinct.

"Sometimes these scrip warrants were drawn to the order of some particular firm or individual and given in payment for shell,

lumber, machinery, or other equipment and supplies. This type of scrip warrant while payable in one (1), two (2), or more years from date of issue did not always bear interest. . .

" . . .

"1. Must all warrants issued against the road and bridge funds of a county and payable out of revenue anticipated in some future year, said warrants being carried as outstanding by the Treasurer, while other warrants were being paid out of current funds, be classed as time warrants?

"2. Must the Commissioners Court publish their intention to issue Time Warrants as outlined and provided for in Article 2368 (A)?

"3. Can Orange County with a valuation of slightly over eighteen million and No/100 dollars (\$18,000,000.00) issue Ninety-five Hundred and No/100 Dollars (\$9,500.00) in Time Warrants in any one year against its Road and Bridge funds without advertising or publishing or giving notice of the intention of the Commissioners' Court to do so?

"4. If the Commissioners' Court should pass an order authorizing any particular commissioner to issue a warrant, scrip or otherwise, against his particular precinct funds, payable in any year other than the current year with or without interest, said warrant to be used by said commissioner to purchase machinery, shell, or road building material, or to be discounted by said commissioner and the proceeds used to finance current work in his precinct and to pay other warrants issued against his precinct funds to pay claims incurred after these warrants are authorized, is the County Clerk required to issue said warrants on such a court order and is the County Auditor required to approve and countersign such warrants?"

In 1931 the Legislature passed what is denominated as the "Bond and Warrant Law" (Art. 2368a,

V.C.S.). The Bond and Warrant Law, while it recognizes time warrants, and regulates and limits their issuance, does not purport to authorize their issuance; it does expressly authorize the funding of such warrants as are validly issued into negotiable bonds. The manner and mode of such refunding is carefully and minutely specified. In the cases of the erection of court houses, jails, and the construction of public roads, it has been often held that the county has the implied power to issue time warrants to pay therefor (Adams vs. McGill, 146 S. W. (2d) 332; San Patricio County vs. McClane, 58 Tex.243; Davis vs. Burney, 58 Tex. 364; Stratton vs. Commissioners' Court, 137 S. W. 1170; Lasater vs. Lopez, 217 S. W. 373).

Section 7, Article XI of the Constitution of Texas provides in part:

" . . . No debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent as a sinking fund. . . ."

This department, in discussing the above constitutional provision, in Opinion No. 0-6433, dated July 24, 1945, stated:

"The foregoing provision is a restriction and limitation, and it has been held that when no authority exists to levy a tax to pay a debt, no power can exist to incur the debt. (Lasater v. Lopez, (Civ.App.) 202 S. W. 1039, affirmed 110 Tex. 179, 217 S. W. 373.) We point out that the term 'debt' as used in the above constitutional provision is to be distinguished from obligations payable from current revenues. The term 'debt', above referred to has been defined 'as comprehending any pecuniary obligation imposed by contract, except such as is at the date of the agreement within the lawful and reasonable contemplation of the parties, to be satisfied out of the current revenues for the year, or out of some fund then within the immediate control of the commissioners' court.' (11 Tex. Jur., Sec. 121, p. 670). If at the time a contract is made, it is contemplated that any

part of the purchase price is to be paid from taxes levied and collected for future years, the obligation constitutes a 'debt' within the meaning of the constitutional prohibition.

"The legislature has authorized counties to create 'debts' within the meaning of the constitution by authorizing the issuance of bonds and time warrants, and we are unable to find any legal means by which a commissioners' court may obligate the tax revenues of the county for a future year other than by complying with the statutory provisions as to the issuance of bonds and/or time warrants."

The term "time warrant" has been defined as including any warrant issued by a city or county not payable out of current funds and those warrants issued and payable out of current funds are known as "scrip warrants". Therefore, your first question should be answered in the affirmative inasmuch as warrants issued and payable out of anticipated revenues in future years should be classified as time warrants.

Section 2 of Article 2368a, V. C. S., provides in part as follows:

". . . Notice of the time and place when and where such contract shall be let shall be published in such county (if concerning a county contract, or contract for such subdivision of such county) and in such city (if concerning a city contract), once a week for two consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen days prior to the date set for letting said contract, and said contract shall be let to the lowest responsible bidder, on the respective type of construction selected. . .

". . . Provided, that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens, or to preserve the property of such county or city, or when it is necessary to preserve

or protect the public health of the citizens of such county or city, or in case of unforeseen damage to public property, machinery or equipment, this provision shall not apply; and provided further, that it shall not be applied to contracts for personal or for professional services, nor to work done by such county or city and paid for by the day, as such work progresses."

Section 3 of Article 2368a, V.C.S., is as follows:

"When it shall be the intention of the Commissioners' Court, or of the governing body, to issue time warrants for the payment of all or any part of the proposed contract, the notice to bidders required under Section 2 of this Act shall recite that fact, setting out the maximum amount of the proposed time warrant indebtedness, the rate of interest such time warrants are to bear, and the maximum maturity date thereof.

Section 5 of Article 2368a, V.C.S., is substantially as follows:

"The notice required in Sections 2 and 3, and the right to referendum election defined in Section 4, shall not be applicable to expenditures payable out of current funds or bond funds, as above described, nor to additional expenditures by counties unless in excess of Five Hundred Dollars (\$500.00) for each One Million Dollars (\$1,000,000.00), or a part thereof, of taxable property in said county, according to the last approved tax rolls; . . . and provided further that no such warrants shall ever be issued by a county in excess of One Hundred Thousand Dollars (\$100,000.00) for any one year, without the duty to give notice and the right to referendum provided in Section 3. If in excess of the maximum, the expenditure cannot be authorized until the expiration of the time for filing the petition for referendum vote has expired. . ."

In the case of Foreman vs. Gooch, et al, 184 S. W. (2d) 481, the court stated as follows:

"Appellant, in his briefs, concedes that the Commissioners Court has authority to issue what is commonly called 'interest bearing time warrants,' contending that such warrants are authorized by the provisions of Article 2368a, Vernon's Ann. Civ. St., which statute is known as the 'Bond and Warrant Law.' With this contention we are unable to agree. As we understand the decisions, the authority for a Commissioners' Court to issue interest bearing time warrants is derived from what now is Article 2351, Vernon's Ann. Tex. Civ. St. San Patricio County v. Jno. McClane, 58 Tex. 243; Lasater v. Lopez, 110 Tex. 179, 217 S.W. 373. While Article 2368a, Vernon's Ann. Civ. St., is a restriction or limitation upon the authority of the Commissioners' Court in issuing such warrants Section 5 of said Article provides that such Act does not apply to expenditures payable out of current funds."

Therefore, in answer to your second question, it is the opinion of this department that notice must be given of the intention of the Commissioners' Court to issue time warrants if the expenditures are in excess of \$500.00 for each \$1,000,000.00 of tax valuation of your county, and the notices required by Article 2368a, supra, must be given before the Commissioners' Court could legally issue time warrants for such purposes. Your second question should be answered in the affirmative.

In question No. 3 you ask whether Orange County may issue \$9,500.00 "in time warrants in any one year against its road and bridge funds without advertising or publishing or giving notice of the intention of the Commissioners' Court to do so," and it is assumed by this department that the expenditure is to be made from and the warrants issued against current funds. If such be the case, then obviously your question relates to scrip warrants instead of time warrants as stated in your question, and it will be seen from the foregoing case of Foreman vs. Gooch, et al, supra, that the provisions of Section 5 of Article 2368a do not apply to those expenditures from current funds, but if the indebtedness is to be evidenced by a time warrant, that is, one for a future year, then the provisions of Section 5 would be applicable. Therefore, it is the opinion of this department that Orange County, whose valuation is slightly over \$18,000,000.00, may issue \$9,500.00 in scrip warrants from the current funds of its road and bridge funds without advertising, publishing

or giving notice of its intention to do so. Your third question should be answered in the affirmative.

Any warrant ordered issued by the Commissioners' Court, payable out of the reasonably anticipated revenues for the current year is a valid warrant and should be issued by the County Clerk and approved by the County Auditor. But, if a warrant be ordered issued against future revenues of the county and not payable within the year from current funds, the same would be classed as a time warrant. Therefore, a prerequisite to the issuance of time warrants would be the required notice, a tax levy, and the establishment of a sinking fund to care for the same. The County Clerk would be bound by the order of the Commissioners' Court to perform a ministerial duty, but if the time warrants are not in conformity with law the County Auditor is not legally authorized to approve the same.

SUMMARY

1. A time warrant includes any warrant issued by a city or county not payable from current funds and notice, a tax levy, and the creation of a sinking fund are prerequisites for the issuance of the same by a Commissioners' Court.

2. The Commissioners' Court of Orange County, whose valuation is slightly over Eighteen Million Dollars, may issue Nine Thousand Five Hundred Dollars in scrip warrants on its "current funds" without advertising or giving notice of its intention to do so. Art. 2368a, V.C.S.; Foreman vs. Gooch, et al, 184 S.W. (2d) 481; and Adams vs. McGill, 146 S.W. (2d) 332.

APPROVED:

*Price Daniel*  
ATTORNEY GENERAL

EW:WB:jrb:mv

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Burnell Waldrep*  
Burnell Waldrep  
Assistant