



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

HICE DANIEL
ATTORNEY GENERAL

June 30, 1947

Hon. Vernon D. Adcock
County Attorney
Dawson County
Lamesa, Texas

Opinion No. V-282

Re: Authority of Dawson
County to expend money
for the pavement of a-
reas upon the court-
house yard and a relat-
ed matter.

Dear Mr. Adcock:

Your request for an opinion of this Depart-
ment is substantially as follows:

"The Court House in Lamesa is located on a block of land deeded to the County for the consideration of \$1.00 about the time the Original Town of Lamesa was platted and became the County Seat. This Block of land is square and has wide streets running on four sides of the Block. These streets permit angle parking on both sides of the street. During Saturday's busy hours, it is difficult to find parking space within a block of this Court House Block.

"It has been proposed that the City of Lamesa and Dawson County, jointly finance the pavement of areas upon this Court Yard. This area has heretofore been kept in grass and trees and after it is paved, will be open to the public as free parking space for customers of stores around the Court House square as well as for those who may have business in the Court House...

"In the preparation of the budget for the current year, this was not one of the planned expenditures.

"May Dawson County legally use this ground as parking space and expend County funds separately, or jointly with the City, in paving the

same? If so, what County fund, Court House & Jail, or Road & Bridge, could be used for this purpose."

Previously, in conformity with your request by telegram, you were advised that former opinions of this Department authorized the County of Dawson to pay its proportionate share of the proposed project, provided it was properly budgeted.

Generally speaking, a County Commissioners' Court may exercise only such authority as is conferred by the Constitution and statutes of this State. (Art. V, Sec. 18, Tex. Constitution; Art. 2351, V.C.S.; 11 Tex. Jur. p. 563; Bland v. Orr, 39 S.W. (2d) 558; Dobson v. Marshall, 118 S.W. (2d) 621; and Howard v. Henderson County, 116 S.W. (2d) 479).

In an opinion numbered O-6146, dated November 13, 1944, this Department stated:

"With reference to your question regarding the paving of all the streets around the Court House and the payment for such improvement, you are advised that it is our opinion that by virtue of Article 1082, the County being the owner of the Court House property, would under this Article, have authority to defray its proportionate part of costs of street improvements. It is our further opinion that the Commissioners' Court has the legal authority to pave and pay for any portion of the streets around the Court House where such streets constitute a part of the County road system, whether such streets are a part of the Court House property or are owned by others than the County."

In Opinion No. 2033, Report of Attorney General 1918-1920, page 117, the Attorney General stated:

". . . I would therefore advise you that the County Coimissioners may . . . pay the entire cost of the pavements of such portions of the court house square within an incorporated town or city as are used for highway purposes. . ."

In the case of Dodson v. Marshall, 118 S.W. (2d) 621, Justice Alexander, speaking for the Court, stated as follows:

"The Constitution, art. 5, sec. 18, Vernon's Ann. St. Const. art. 5 § 18, provides: '* * * 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.'

". . . The duty to provide a courthouse includes the obligation to furnish same with suitable and necessary equipment. This is not limited to the bare necessities for carrying on county business but includes modern conveniences incident thereto. . .

". . . But so long as there is a reasonable exercise of the discretion vested in the commissioners' court in a matter within its jurisdiction, that court alone has the right to determine the policy to be pursued and the district court has no authority to intervene. Scheiller v. Duncan, Tex. Civ. App., 21 S. W. 2d 481, pars. 5, 6; Slimp v. Wise County, Tex. Civ. App., 96 S.W. 2d 537, pars. 7-9; Tarrant County v. Shannon, Tex. Sup., 104 S. W. 2d 4, par. 5. . ."

Inasmuch as you were previously advised that the expenditure would be authorized if properly budgeted, it will be noted that if such expenditure was not set up in the original budget, it must now be predicated upon facts constituting it a case of "grave public necessity to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget." (Art. 689a-11, V.C.S.) It is within the discretion of the Commissioners' Court to determine whether a situation exists as would authorize an amendment to the budget to allow the expenditure in question. Therefore, it is the opinion of this Department that areas on the courthouse yard may be used for parking purposes by Dawson County and that the county may pay for the cost of paving the same. If such parking areas do not constitute a part of the street but actually

comprise a part of the court house yard, such expenditure if properly budgeted, could be paid from the court house fund of the Permanent Improvement Fund of such county. However, if the facts are such that this project amounts to a widening of the existing streets, and if such streets are portions of the designated or established county road system, then the expenditure could be made from the County Road and Bridge Fund, severally or jointly, with the City of Lamesa.

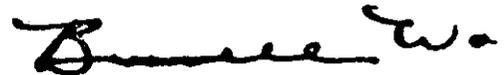
SUMMARY

Dawson County may use certain areas on the courthouse yard for parking purposes and the county may pay for the cost of paving the same. If such parking areas do not constitute a part of the street but actually comprise a part of the courthouse yard, such expenditure, if properly budgeted, could be paid from the courthouse fund of the Permanent Improvement Fund of such county. However, if the facts are such that this project amounts to a widening of the existing streets, and if such streets are portions of the designated or established county road system, then the expenditure could be made from the county road and bridge fund, severally or jointly, with the City of Lamesa.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By



Burnell Waldrep
Assistant

APPROVED



ATTORNEY GENERAL

BW:djm:jrb