



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

August 16, 1947

Hon. V. H. Sagebiel  
County Attorney  
Gillespie County  
Fredericksburg, Texas

Opinion No. V-347

Re: Where a county procures a right-of-way for a farm-to-market road wholly within two precincts, is it a county-wide project to be paid from funds of the entire county.

Dear Sir:

Your statement and request for an opinion are in part as follows:

"The population of Gillespie County, according to the last Federal Census is 10,670, and the assessed valuation is approximately \$8,000,000.00.

"The Commissioners, who are also ex officio Road Commissioners, operate, build and maintain county roads individually in their several precincts, each out of road building funds apportioned their precincts pro rata according to assessed valuations in their individual precincts. For instance, Precinct Number One, which includes the valuations of the city of Fredericksburg, receives 37/100 of the total county road funds and spends about 1/5 thereof in building and maintaining streets in the city of Fredericksburg. The other three precincts are apportioned 23/100, 22/100 and 18/100, respectively.

"A Federal farm-to-market road is being surveyed under the supervision of the State Highway Department and the right-of-way must be procured. This highway is being built in a section of the county affecting only two of the Commissioners' Precincts and is not in any way beneficial to the residents of the other two precincts.

"Under these facts is the procuring of the right-of-way a matter to be paid for out of the funds of the precincts in which the farm-to-market road is being constructed, or is it a county-wide project for which all the Commissioners precincts must provide funds?"

The question immediately arises as to what interpretation and effect shall be given Article 6740, V.C.S., which reads in part as follows:

"The commissioners court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct."

In regard to similar situations involving State highways, it is well settled that the Commissioners' Court may look to the entire county for funds to procure a right-of-way that affects only one precinct. *Shivers v. Stovall*, 75 S.W. (2d) 276, affirmed 103 S.W. (2d) 363; *Garland v. Sanders*, 114 S.W. (2d) 302 (writ dismissed). The principles and theories in relation to a "farm-to-market" road are just the same. It is stated in the *Shivers* case that:

"These provisions of the law, as well as others which might be mentioned, clearly contemplate that the commissioners court of each county shall regard the roads and highways of the county as a system, to be laid out, changed, repaired, improved, and maintained, as far as practical, as a whole to the best interests and welfare of all the people of the county. It is clearly contemplated that all roads and bridges of the county shall be maintained, repaired, and improved when necessary, as the conditions may require, regardless of the precinct in which same may be located, so far as the funds will equitably justify.

"In our opinion, there is obviously nothing in this article which compels the commissioners court to divide the road and bridge fund according to any fixed mathematical formula, and apportion same in advance for the purpose of being expended in any given precinct. The use of the word 'expended' to our minds clearly suggests that said funds shall be apportioned and paid out from time to time as the necessity for their use arises in the ordinary administration of the county affairs." (Emphasis supplied)

From the above cited case, it is apparent that the court makes no distinction as to the type or classification of roads in regard to its construction out of the county road fund. Nor do the later statutes, Article 6674-20, V.C.S., and H. B. No. 21 of the 50th Legislature, which deal specifically with "farm-to-market" roads, in any way change the above holding.

On the other hand, it is elementary that the Commissioners' Court is the agency of the whole county with each commissioner responsible to more than his own precinct. His duties are county-wide; he must safeguard the welfare of all the county, and in carrying out his powers of establishing and maintaining a county road system, the county road fund may be used in one or all precincts depending upon the needs of the county. This should not be taken to mean, however, that it is mandatory that the Commissioners' Court should look to the whole county to procure the funds for a right-of-way. Article 6740, supra, clearly points out that, as nearly as conditions will allow and as nearly as necessity will permit, the said funds shall be expended in specific precincts in proportion to the amount collected therein. In this regard, also, the Shivers case, supra, explains:

"... the commissioners court must give effect to said article 6740 except when the necessities of the roads and bridges require a departure from it. That article requires that the road and bridge funds of all counties shall be judiciously and equitably expended. It further requires that such funds shall, as nearly as the condition and necessity of the roads will permit, be expended in each commissioners precinct in pro-

portion to the amount collected in such precinct. The dominant purpose of this statute seems to be to require that the road and bridge fund shall be expended in each commissioners precinct in proportion to the amount collected therein. In this regard, the statute means that each precinct shall prima facie be entitled to its own funds, and in the absence of any reasons to the contrary they should be so divided and expended. However, the duty to expend the funds in the proportion above mentioned is not an absolutely inflexible one. . . . We think, however, that the requirement to expend the fund in the proportion mentioned cannot be avoided except in cases or conditions of necessity. Of course, the commissioners court has the right to exercise its sound judgment in determining the necessity, but it cannot act arbitrarily in regard to such matter. (Emphasis supplied)

In view of the foregoing, it is our opinion that "each precinct shall prima facie be entitled to its own funds;" however, in "cases or conditions of necessity" the Commissioners' Court in "its sound judgment" may expend funds allocated to one precinct in another precinct. In other words, this matter must be decided by the Commissioners' Court, and so long as said Court exercises its best judgment and does not act arbitrarily in regard thereto, its findings will not be disturbed.

Under the facts submitted, the cost of procuring the right-of-way for the farm-to-market roads should be paid for out of the funds allocated to the two precincts in which the roads are to be located, unless the Commissioners' Court in its sound judgment finds, by proper court order, that this is such a case, or conditions are such, that the funds allocated to one precinct or precincts should be expended in another precinct or precincts.

#### SUMMARY

The cost of procuring a right-of-way for a farm-to-market road should be paid for out of funds allocated to the precincts in which the road is to be located, unless

the Commissioners' Court in its sound judgment finds, by proper court order, that conditions are such that the funds allocated to one precinct or precincts should be expended in another precinct or precincts. (Shivers v. Stovall, 103 S.W. (2d) 363)

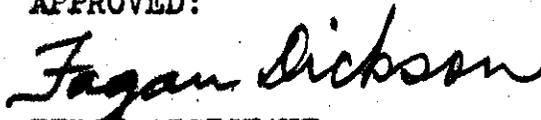
Very truly yours

ATTORNEY GENERAL OF TEXAS

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