



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

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FAGAN DICKSON
FIRST ASSISTANT

Hon. John A. Romberg
County Attorney
Gonzales County
Gonzales, Texas

Opinion No. V-507

Re: The authority of the
Commissioners' Court to
dissolve a road dis-
trict which has an
authorization for the
issuance of bonds and
upon which no action
has been taken.

Dear Mr. Romberg:

Your request for an opinion of this Department relating to a bond authorization and the dissolution of Road District No. 11 in your county is, in part, as follows:

"By order of the Commissioner's Court of Gonzales County, Texas, dated January 1st, 1937, Road District No. 11 was created. This Road District No. 11 included the territory included in Road Districts Nos. 1 and 3 of Gonzales County, both of which had been in existence for many years prior to 1937. A road bond election was ordered by the Commissioner's Court on January 27th, 1937 'to determine whether or not the bonds of said Road District No. 11 of Gonzales County, Texas shall be issued in the amount of Forty Thousand Dollars', for the purpose of construction, maintenance and operation of macadamized, graveled, or paved roads and turnpikes, or in aid thereof, and whether or not ad valorem taxes shall be levied annually on all taxable property within said Road District No. 11, of Gonzales County, Texas for the purpose of paying the interest on said bonds and to provide a sinking fund for the redemption thereof at maturity. This bond election carried by the requisite vote. The Road District No. 11 bonds have never been

issued and after the order of the Commissioner's Court canvassing the returns and declaring the proposition carried, no further action was taken.

"At the time this bond election was petitioned for, ordered, and voted on, both Road District No. 1 and Road District No. 3 had outstanding bonded indebtednesses aggregating in excess of \$100,000.00.

"The Commissioner's Court now wishes to abolish Road District No. 11, and dispose of the bond authorization, in order that the territory can be redistricted more in line with current road demands and a new bonded indebtedness on the new district can be created.

"QUESTION: How can this authorization to issue \$40,000.00 bonds of Road District No. 11 voted in 1937 be set aside and the Road District 11 abolished?"

"Now, in view of the fact that the purpose for which the bonds were voted no longer exists, and that the wording of the validating statute (Article 752Y-3) merely authorizes and empowers the Commissioner's Court to proceed with the issuance of bonds not voted in accordance with the Compensation Bond Title, and that over 10 years have passed since the bonds were authorized, would an order of the Commissioner's Court, reciting such facts, and ordering and declaring the authorization void and dissolving the Road District, be effectual and valid to the extent that it would not be necessary for a proposed road district including portion of Road District No. 11, to comply with Bond Compensation Statutes in regard to the authorized bonds of such Road District 11, when such proposed Road District votes new bonds?"

The Commissioner's Court is a court of limited jurisdiction and confined to the authority conferred upon the court by the Legislature.

Article 784a, Vernon's Civil Statutes, provides that in the event any road bond voted or issued by a county, political subdivision or defined district remain unsold at the time of the passage of this Act, then the Commissioners' Court may upon petition order an election to determine whether or not such road bonds shall be revoked or cancelled. However, the effective date of this Act was September 22, 1932, and your bonds were voted in 1937, making the provisions of this Act inapplicable inasmuch as it applies only to those situations in effect at the time of the passage of this Act.

In the case of Orr v. Marrs, 47 S. W. (2d) 440, the court stated:

"The bonds cannot be revoked or cancelled by any agency unless the power to do so is conferred by legislative authority and any doubt as to the existence of such power is, under well established principles, resolved against its existence."

Your factual situation reflects that Road District No. 11 included Road Districts Nos. 1 and 3 in Gonzales County, both of which had an outstanding bonded indebtedness in excess of \$100,000.00, and that in the creation of Road District No. 11 the Commissioners' Court failed to comply with the Compensation Bond Act.

Article 767d, V. C. S., provides as follows:

"Where any road district created under the provisions of this Act includes within its limits any previously created road district, or any political subdivision or precinct, having at such time road bond debts outstanding, such included district or subdivision shall be fully and fairly compensated by the new district in an amount equal to the amount of the bonds outstanding against such included subdivision or district, and which shall be done in the form and manner prescribed for the issuance of county bonds under Sections 25 to 27, inclusive, of this Act, except the petition shall be signed by fifty or a majority of the resident property taxpaying voters of the new district, and the bonds proposed to be issued shall be for the purchase or construction of roads in

the included subdivisons or districts and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes; or in aid thereof. Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, Sec. 28."

In *San Antonio & A. P. Ry. Co. v. State*, (Com. App.) 95 S. W. (2d) 680, the court said:

"Section 28 (Vernon's Ann. Civ. St. art. 767d), in connection with sections 25 to 27 (Vernon's Ann. Civ. St. arts. 767a-767c), of said act provides that where any road district created under the provisions of said act includes one previously created and having road bonds outstanding, such included district shall be fully and fairly compensated by the new district in this manner: An even exchange made with the holders of the outstanding bonds, and if this cannot be done, then an equal amount of the new bonds marked 'non-negotiable' shall be deposited with the county treasurer for the credit of the interest and sinking fund as a guarantee for the payment of such outstanding bonds that have not been exchanged, after which no levy shall be made under the original bond issue, but in lieu thereof, from the taxes collected on the new bond issue shall be passed to the credit of such included district the necessary sums (interest and sinking fund as so collected) to be used to pay in full the outstanding bonds thereof."

It will be seen from the foregoing that the Commissioners' Court of Gonzales County, in creating Road District No. 11 failed to comply with Article 767d, supra, and it is the opinion of this Department that Road District No. 11, although created by the Commissioners' Court, did not function pursuant to law; and even though a bond issue was authorized in said district, the same is of no force and effect.

Inasmuch as no bonds were issued, it is assumed that no tax was levied in Road District No. 11 for the indebtedness in Road Districts Nos. 1 and 3. There-

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fore, it follows that Road Districts Nos. 1 and 3 were not affected by the creation of Road District No. 11 on January 1, 1937 since the purpose for which said district was created was never put in existence. The district never did function as a district.

It is true that the 50th Legislature (Art. 752y-3, V. C. S.) validated unissued bond issues of road districts, such as Road District No. 11. Validating acts, however, are usually enacted for the purpose of curing matters of procedure or mechanics, and it is our opinion that by necessary implication the Act would apply only to bond issues, the proceeds of which could be used to carry out the mandate of the voters. For instance, suppose a situation where county bonds are voted to construct a specific road, and after the proposition is voted upon but before the bonds are issued and delivered, the State Highway Department designates the road as a state highway and fully constructs the same. It is clearly evident in such a situation that the purpose for which said bonds were voted would cease to exist. We do not think that it could be the legislative intent in the enactment of such a validating act that said bonds could thereafter be issued and sold. The Act could apply only to bond issues, the proceeds of which could be used to carry out the bond purpose.

Based upon your factual situation, it is our opinion that the road district never came into active existence. Before a new road district, which includes a previously created district with outstanding bonds, can effectively come into existence, compensation bonds must be voted. Compensation bonds were never voted in the situation under consideration; moreover, the purpose for which the road bonds were voted in District No. 11 no longer exists. We do not think that the word "abolish" could be applied to such a district, for the same would necessarily contemplate previous and actual existence. We do think that the Commissioners' Court, under the circumstances, would have the power, implied at least, to rescind its former order. It passed an order purporting to establish the district for the constitutional and statutory purpose, but that purpose was not carried out, and has now ceased to exist. Within its valid discretion, therefore, the court may determine to rescind its former order.

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After the rescission of such order, the court may, if it so determines, create another road district under the statutory procedure, which district would include part of the territory which was purportedly within the district, the order for the establishment of which was rescinded.

SUMMARY

1. The creation of a road district which includes a previously created road district with an outstanding bonded indebtedness, requires compliance with the provisions of the Compensation Bond Act and compensation bonds must be voted.

2. An Act which validates previously voted but unissued bonds does not apply to bonds if the purpose for which they were voted no longer exists.

3. The Commissioners' Court of Gonzales County, Texas, under the facts submitted, may by appropriate order rescind its previously enacted order under which Road District No. 11 was purportedly established, and may thereupon establish another road district which would include part of the territory which was purportedly within said Road District No. 11.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

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BW:mw

APPROVED:

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