



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

November 13, 1948

Hon. Howard Traweek  
County Attorney  
Motley County  
Matador, Texas

Opinion No. V-717

Re: The validity of the  
described sale of Coun-  
ty land under a Commis-  
sioners' Court order  
which reserved the right  
in the Court to reject  
any and all bids.

Dear Sir:

Your request for an opinion on the above sub-  
ject reads, in part, as follows:

"Attached hereto you will please find  
copies of Order No. 1434, entered by the  
Commissioners Court of Motley County on Aug-  
ust 25, 1948, and Order No. 1440, entered by  
the Commissioners Court of Motley County on  
October 8, 1948.

"As will be noted from the contents of  
Order No. 1434, it was entered appointing a  
commissioner to sell certain lands belonging  
to Motley County, the sale to be made at pub-  
lic auction and on terms provided by the  
court in the order. You will also note that  
in the order the Commissioners Court reserv-  
ed the right to reject all bids on said lands,  
this being done through a desire to protect  
the county's interests in obtaining an ade-  
quate price for the land.

"Thereafter the sale was publicized in  
the local newspaper and by the distribution  
of hand bills throughout the county. The  
sale was held on the date and at the time  
designated in the order of sale and a num-  
ber of prospective buyers attended and bid  
on the land. The members of the Commis-  
sioners Court had convened in a called session  
immediately prior to the sale and had agreed  
among themselves as to the lowest price that

they deemed acceptable to them for the sale of this land. All members were present at the sale and when the high bid of \$70.00 per acre was received and all other bidders had withdrawn from the bidding the members of the Commissioners Court notified the commissioner that the bid of \$70.00 was acceptable to them and the land was knocked off to this high bidder. Immediately after this sale the members of the court convened in the Commissioners court room and entered Order No. 1440 and accepted the purchaser's check in the amount of \$9,306.50 as the down payment on said land, and the commissioner entered into a written contract of sale with the purchaser, the sale being according to the terms set out in Order No. 1434.

"The opinion of your department is desired on the question of the validity of this sale under Order No. 1434 by the Commissioners Court of Motley County. Does the fact that the Commissioners Court by its order reserving the right to reject all bids have the effect of invalidating or voiding the sale by the commissioner? That is, was Order No. 1434 void under the provisions of Article No. 1577? If so, what effect, if any would Order No. 1440 accepting the bid, and the acceptance of the purchaser's down payment of \$9,305.50, have in validating the sale by ratification?"

The orders of the Commissioners' Court of Motley County of August 25, 1948 which you attached to your letter provide:

"ORDER NO. 1434

"Motion made by J. N. Fletcher, seconded by L. N. Standefer, and passed by unanimous vote of the court, all members being present, that H. H. Courtney be appointed commissioner to hold a public auction sale at the court house door in Matador, Texas, on October 8, 1948, between the hours of 2:00 P. M. and 4:00 o'clock P. M. for the purpose

of selling to the highest bidder the county farm now owned by Motley county, and described by metes and bounds as follows: . . ."

(The land is then described. Since no question is raised as to the sufficiency of the description, that portion of the order is omitted)

"The sale of said land to be made subject to the following terms and conditions: The Commissioners Court of Motley County reserves the right to reject any and all bids; . . .

"The Commissioner shall be authorized to execute a general warrant deed and any other instruments necessary to convey fee simple title to said lands, which said deed and instrument are to be executed by said commissioner after the acceptance of the highest bid by the Commissioners' Court."

"ORDER NO. 1440

"Motion was made by J. N. Fletcher, and seconded by M. H. Leary, that the bid of R. E. Campbell in the amount of \$70.00 per acre, making a total of \$18,613.00 on the county farm, consisting of 265.9 acres, be accepted, said bid being the highest bid made this date at the public auction of said lands held by H. H. Courtney, commissioner for Motley County. Motion carried by unanimous vote, all members of the court being present.

"It is therefore ordered by the Commissioners Court of Motley County, Texas, that the bid of R. E. Campbell, in the amount of \$18,613.00 on the county farm lands and made this date, the 8th day of October, 1948, at public auction held by H. H. Courtney as commissioner for Motley County, be accepted, and the sale by said commissioner is hereby ratified and confirmed, said lands being described as follows:

"(Description of land as in Order No. 1434)."

Article 1577, Vernon's Civil Statutes, authorizing the sale of any real estate of a county provides as follows:

"The commissioners court may, by an order to be entered on its minutes, appoint a commissioner to sell and dispose of any real estate of the county at public auction. The deed of such commissioner, made in conformity to such order for and in behalf of the county, duly acknowledged and proven and recorded shall be sufficient to convey to the purchasers all the right, title and interest and estate which the county may have in and to the premises to be conveyed. Nothing contained in this article shall authorize any commissioners court to dispose of any lands given, donated or granted to such county for the purpose of education in any other manner than shall be directed by law."

It seems well settled in this State that the sale of county owned land must be at public auction and in the manner set out in Art. 1577, V. C. S. See the following authorities:

Ferguson v. Halsell, 47 Tex. 421  
Llano County v. Johnson, 29 S. W. 56  
Llano County v. Knowles, 29 S. W. 549  
Hardin County v. Nona Mills Co., 112  
S. W. 822  
Spencer v. Levy, 173 S. W. 550

This does not mean, however, that the commissioners are without authority to confirm or reject a sale made at public auction for as pointed out in Attorney General's Opinion No. 2849, dated April 29, 1931, the Commissioners' Court still retains general control over the sales including the power to reject any sale made by the appointed commissioner at auction and the prospective purchasers should be put on notice that all bids are subject to the approval of the Commissioners' Court. We quote the following from Attorney General's Opinion No. 2849:

"The appointment of a commissioner to hold the sale does not mean that all the powers of the commissioners' court with reference to sales of real estate are thereby delegated to the special commissioner. The court still retains general control, including the power to confirm or reject any sale made by the commissioner at auction. Its action should be evidenced by an order entered in the minutes of the court. The action of the court in this respect is analogous to the control which a probate court retains over administrator's sales. There is a discretion regarding sale of county lands vested in the commissioners' court by the Constitution and laws of the State, no part of which can be delegated. Logan vs. Stephens County, 98 Texas 283. For this reason the purchasers should be put on notice, by a statement to that effect in the notice of sale, that all bids are subject to approval by the commissioners' court. (Emphasis added)

According to the facts submitted by you the sale was made at public auction by a commissioner appointed under the provisions of Article 1577, V. C. S., and the highest bid was approved by the Commissioners' Court. In view of the foregoing authorities, it is our opinion that the two orders of the Commissioners' Court, copies of which you enclosed, are valid.

This opinion is limited to the question of the authority of the Commissioners' Court to reserve the right to approve or reject any and all bids submitted at a sale of county owned land at public auction in the mode set out in Article 1577, V. C. S.

#### SUMMARY

Sale of county land must be made at public auction in the mode set out in Article 1577, V. C. S. The Commissioners' Court in its order appointing a commissioner to sell the land at public auction may provide that all bids are subject to the approval of the

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Commissioners' Court. Ferguson v. Halsell,  
47 Tex. 421; Attorney General's Opinion No.  
2849, dated April 29, 1931.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *John Reeves*

John Reeves  
Assistant

JR:mw:wb

APPROVED:

*Fagan Dickson*

FIRST ASSISTANT  
ATTORNEY GENERAL