



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

FRICK DANIEL  
ATTORNEY GENERAL

March 28, 1952

Hon. Homer L. Moss  
County Attorney  
Wheeler County  
Wheeler, Texas

Opinion No. V-1424

Re: Authority of the commissioners' court to charge to the allotment of the road and bridge fund of one precinct money expended on roads in that precinct by a commissioner of another precinct.

Dear Sir:

Your request for an opinion of this office presents the following question:

Where a county commissioner of one precinct repairs county roads in another commissioner's precinct in his county, without the consent of the resident commissioner, can the commissioners' court charge to the allotment of the resident commissioner's precinct the amount of money expended for such repairs?

Article 2342, V.C.S., provides:

"The several commissioners, together with the county judge, shall compose the 'Commissioners Court,' and the county judge, when present, shall be the presiding officer of said court."

Article 2351, V.C.S., provides:

"Each commissioners court shall:

...

"3. Lay out and establish, change and discontinue public roads and highways.

"4. Build bridges and keep them in repair. . . .

"6. Exercise general control over all roads, highways, ferries and bridges in their counties. . . ."

In view of the foregoing provisions it is the duty of the commissioners' court, and not the individual commissioners, to construct and maintain the roads of the county. Each commissioner must keep himself informed of the condition of the roads and the need for repairs and improvements in his precinct and report this information at each term of the commissioners court. Art. 6713, V.C.S. A commissioner should have the approval of the commissioners' court before any work on the roads is performed because individual commissioners have no authority to bind the county by their separate actions. Canales v. Laughlin, 147 Tex. 169, 214 S.W.2d 451 (1948); Swain v. Montgomery County, 154 S.W.2d 695 (Tex. Civ. App. 1941, error ref. w.o.m.). However, the commissioners' court may ratify that which it might have authorized originally. Cameron County v. Fox, 61 S.W.2d 483 (Tex. Comm. App. 1933); State v. Carnes, 106 S.W.2d 397 (Tex. Civ. App. 1937). We therefore assume that the work outlined in your request was either performed upon an order of the commissioners' court or subsequently ratified.

It was held in Attorney General's Opinion O-4548 (1942) that it is the duty of the commissioners' court to construct and maintain the roads of a county as a whole without regard to precinct lines. Likewise, in Attorney General's Opinion V-566 (1948), it was held that automobile registration fees paid into the road and bridge fund of the county should be expended in such a manner as to give the county as a whole a uniform system of roads without reference to precinct lines.

In Canales v. Laughlin, *supra*, and Stovall v. Shivers, 129 Tex. 256, 103 S.W.2d 363 (1937) it was held that the commissioners' court in maintaining and repairing the roads of the county shall regard the roads as a unit and expend money for such maintenance to the best interests and welfare of all the people of the county. We quote the following from Stovall v. Shivers:

". . . 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. By article 2342 of the Revised Statutes, it is provided that the several commissioners, together with the county judge, shall compose the 'commissioners court.' Such court is manifestly a unit, and is the agency of the whole county. The respective members of the commissioners court are therefore primarily representatives of the whole county, and not merely representatives of their respective precincts. The duty of the commissioners court is to transact the business, protect the interests, and promote the welfare of the county as a whole. Among the powers conferred upon such court by article 2351 are the following: The power to lay out and establish, change and discontinue roads and highways, the power to build bridges and keep them in repair, and the power to exercise general control over all roads, highways, ferries, and bridges in their counties. They have the power to levy a tax not to exceed 15 cents on the \$100 valuation for roads and bridges. This fund is, of course, for the benefit of all roads and bridges of the county. 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. This being true, we think that a commissioners court cannot voluntarily disable itself from performance of this general obligation by arbitrarily dividing the road and bridge fund according to some fixed standard, and apportioning same to be expended in a particular precinct, to the detriment of roads and bridges in other precincts." (103 S.W.2d at 366)

Since it is the duty of the commissioners' court to maintain and repair county roads as a whole, it had the authority to authorize the work outlined in your request, without the consent of the resident commissioner, and charge to the allotment of that precinct the amount of money expended.

SUMMARY

The commissioners' court has authority to charge to the allotment of the road and bridge fund of one precinct money expended on roads situated in that precinct by a commissioner of another precinct provided such expenditure was authorized by the commissioners' court. Canales v. Laughlin, 147 Tex. 169, 214 S.W.2d 451 (1948); Stovall v. Shivers, 129 Tex. 256, 103 S.W.2d 363 (1937).

Yours very truly,

PRICE DANIEL  
Attorney General

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