



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

December 3, 1953

Hon. William R. Boyd, Jr.
Chairman, Legal Committee
Texas Turnpike Authority
San Angelo, Texas

Letter Opinion No. MS-111

Re: Authority of the Texas Turnpike Authority to enter into escrow agreements relating to proposed toll roads to be constructed by the Texas Turnpike Company and the Sam Houston Turnpike Corporation.

Dear Mr. Boyd:

Recently you submitted to this office an opinion request in which you asked three questions substantially as follows:

1. Is the Texas Turnpike Authority empowered and directed by law to sign the escrow agreement submitted with the request between the Texas Turnpike Authority, the Texas Turnpike Company and the Republic National Bank of Dallas, Texas?
2. Are the form and content of the proposed escrow agreement correct?
3. Will the execution of such escrow agreement by the Authority constitute either an express or implied waiver of any right, privilege or duty conferred or imposed upon the Authority by law?

Immediately subsequent to receipt of this request, Mr. Armistead Rust, Chairman of the Texas Turnpike Authority, requested this office to consider your request concurrently with a request submitted by Mr. Rust regarding the same questions submitted in your request with respect to the Texas Turnpike Authority entering into a similar escrow agreement with the Sam Houston Turnpike Corporation.

The Texas Turnpike Company and the Sam Houston Turnpike Corporation are corporations duly incorporated under and deriving their powers from the general laws of the State of Texas, principally Articles 1302 Paragraph 61 and 1447-1465, inclusive, Vernon's Civil Statutes. The Texas Turnpike Company's charter was approved by the Attorney General of Texas

and filed in the office of the Secretary of State on January 12, 1950. On January 8, 1953, the corporation duly amended its charter to cover additional toll roads which it would be authorized to construct. Both these dates were prior to the enactment by the Legislature of the Turnpike Authority Act (Chapter 410, Acts 53rd Legislature effective August 25, 1953) and were prior to the date specified in Section 5(n) of said Act (April 1, 1953).

The Sam Houston Turnpike Corporation charter was approved by the Attorney General of Texas and filed in the office of the Secretary of State on December 5, 1952.

The Texas Turnpike Authority is created under and its powers and duties are defined under Chapter 410, Acts 53rd Legislature.

Under the provisions of Section 18, the Texas Turnpike Authority is authorized to enter under certain conditions, into agreements with toll road corporations, as described in Section 5, Subsection (n), for the acquisition by the State of any toll road constructed and operated by the corporation.

The Act prescribes that a toll road corporation as described in Section 5, Subsection (n) shall be obligated irrevocably to make a gift of all of its assets to the State of Texas, and shall bind itself to use its net income and profits only to retire the indebtedness created for the acquisition, construction, maintenance and operation of its toll road; and at the time of acquisition of any real property, execute such instruments as may be necessary to convey or transfer such real property to the State of Texas. The Act further provides that said instruments shall be deposited in escrow with a banking corporation chartered under the laws of Texas or of the United States which escrow agreement shall authorize and empower said escrow agent to deliver such instruments of conveyance and transfer to the authority when certain requirements and conditions have been complied with.

The Authority is authorized to execute such instruments as may be necessary to complete such an escrow agreement.

The agreement submitted with your opinion request and the agreement submitted with the request of Mr. Rust are similar and are such agreements as the Authority is authorized to make under Section 18.

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The form of the proposed escrow agreements are satisfactory.

The execution of the submitted agreements by the Authority would not constitute the waiver of any right, privilege or duty imposed upon the Authority by law, for under Section 18 of the Act, the Authority is specifically authorized to enter into such agreements.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General of Texas

By
Milton Richardson
Assistant

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