



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

April 2, 1959

Honorable D. C. Greer
State Highway Engineer
Texas Highway Department
Austin, Texas

Opinion No. WW 585

Re: Whether Highway Department can
spend highway funds for assess-
ments to pave city streets ad-
jacent to buildings and sites
owned and used by the Highway
Department.

Dear Mr. Greer:

You request the opinion of this office upon the above captioned matter.

The 55th Legislature, 1957, passed H. B. 179, presently codified in Vernon's Civil Statutes as Article 6674w. Subdivision 3 of this act provides in part as follows:

" . . .constructing and operating warehouses and other buildings and facilities used in connection with the construction, maintenance, and operation of the State Highways. . . ."

Prior to the enactment of this specific legislation, this office has for many years uniformly recognized the authority of the Highway Department, in the exercise of the broad general powers conferred upon it by law to construct and maintain a system of highways in the state, to do those things necessary and incidental to that end. This is covered somewhat in detail in our Opinion S-105 referred to in your opinion request, a copy of which we assume you have.

The Highway Department does now have specific legislative authority to construct, operate, and maintain warehouses and other buildings used in the construction, maintenance, and operation of a system of State Highways.

The construction and maintenance of these warehouses, essential as they are to the efficient and economic operation of a State Highway System, need not and should not be considered as isolated from the streets of a city upon which they are located, nor did the Legislature intend that they should be. Free use of the street upon which a warehouse is located and the right of egress and ingress therefrom is necessary to the operation and maintenance of a warehouse. A well-paved street adjacent to the warehouse is desirable for the convenience of the Highway Department and its employees operating and using the warehouse. It is, therefore, quite reasonable to say that

the pro rata cost of paving the street adjacent to a warehouse owned and operated by the State Highway Department should be borne by the Department. A city and the general public is under no legal obligation to assume and pay this cost for the State Highway Department. The Highway Department is, therefore, authorized to pay its pro rata share of the paving of the street attributable to the warehouse frontage thereon if there is an available appropriation from which it may be paid. We next consider that question.

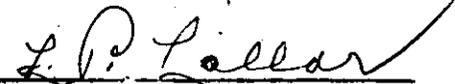
The expenditure of this money shall not be considered as an expenditure for highways directly or per se. The authority for the expenditure comes from its capacity as a land owner. It can spend money for a street improvement levied against a tract of land owned and used by the Highway Department in the performance of its duties just as it could repair the roof of a building located on that land. We understand that this has been your departmental construction for many years.

We are of the opinion that this paving cost may be paid from the appropriation made to the State Highway Department in Item No. 23 of the present biennium appropriation, this for the reason that the cost of this paving may be considered as an administrative expense in connection with the establishing, planning, constructing and maintaining a system of State Highways as contemplated and set forth in Chapter 1, Title 116 and Chapter 186, General Laws, 39th Legislature, Regular Session, and amendments thereto.

SUMMARY

The State Highway Department is authorized to construct and operate warehouses and other buildings and facilities used in connection with the construction, maintenance, and operation of State Highways, and incidental thereto to pay a pro rata share of the cost of paving the street on which such a warehouse is located, and the same may be paid from Item No. 23 of the appropriation to the State Highway Department covering the present biennium.

WILL WILSON
ATTORNEY GENERAL OF TEXAS

BY 
L. P. LOLLAR
ASSISTANT ATTORNEY GENERAL

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APPROVED:

OPINION COMMITTEE:

J. Arthur Sandlin, Chairman

H. Grady Chandler

Elmer McVey

Edward A. Cazares

REVIEWED FOR THE ATTORNEY GENERAL

BY:

W. V. Geppert