



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 23, 1962

Honorable W. G. Walley, Jr.
Acting Criminal District Attorney
Courthouse
Beaumont, Texas

Opinion No. WW-1284

Re: Whether the
Commissioner's
Court of Jefferson
County has the author-
ity to retain legal
counsel to defend
certain members of a
Grand Jury in cases
brought against them
under the stated facts.

Dear Mr. Walley:

Your letter requesting an opinion reads in part
as follows:

"On or about the 1st day of October, 1961, the Criminal District Court of Jefferson County and the 136th Judicial District Court each empaneled a Grand Jury for Jefferson County, Texas. These Grand Juries served until the 5th day of December, 1961, when at such time the Judges of the above-mentioned Courts discharged each Grand Jury subject to recall by written orders duly filed with the District Clerk of Jefferson County in accordance with Article 372, C.C.P. Each Grand Jury was notified of such action in open court and was thereby formally discharged by the Court subject to recall. The Criminal District Court Grand Jury at such session, made it known to the Judge of said Court that they had two indictments and a report which they desired to return before being discharged. The Judge of the Criminal District Court then and there refused to accept said report and indictments and discharged the Grand Jury subject to recall. Eleven members of this Grand Jury then proceeded back to the Grand Jury room and subsequently released a statement to the press.

"A short time after the release of this statement, eleven members of this Grand Jury were sued for libel and indicted by the 136th

District Court Grand Jury for divulging grand jury proceedings predicated upon this released statement.

"The Criminal District Court Grand Jury has now requested the Commissioners' Court of Jefferson County to employ legal counsel in defense of the above suit and indictments.

"We now request an opinion of your office on whether or not the Commissioners' Court has authority to retain legal counsel to defend members of a Grand Jury in suits brought against them under the above alleged facts."

A Commissioners' Court is a court of limited jurisdiction and has only such powers as are conferred upon it by the Constitution and laws of this State by express terms or necessary implication. Hill v. Sterrett, 252 SW2d 766 (Civ. App. 1952, error ref. n.r.e.); Canales v. Laughlin, 147 Tex. 169, 214 SW2d 451 (1948); Childress County v. State, 127 Tex. 343, 92 SW2d 1011 (1936); Roper v. Hall, 280 SW 289 (Civ. App. 1925).

It has been repeatedly held by this office that the Commissioners' Court has the power and authority to employ attorneys in the prosecution of its claims and suits and pay for such services out of the General Fund of the county where the county, as a whole, is interested in and affected by such proceedings. Attorney General's Opinions V-995 (1950); V-232 (1947); O-4955 (1942); and WW-662.

In Attorney General's Opinion V-232 (1947), this office held that a County Commissioner was not entitled to reimbursement from the county for his attorney's fees in defending a suit against him and his bonding company for damages arising from the Commissioner's negligence in failing to repair a county bridge. At first the county was not named as a party to such suit. Later the county was named as defendant and the Commissioners' Court employed the County Attorney in defending the suit against the county. The Commissioners' Court was held to be authorized to employ and pay the attorney for his services in defending the county after the county was made a party to the suit, the reason being that the county as a whole then became interested in and affected by the suit.

In a well reasoned Attorney General's Opinion O-4955, citing the City National Bank of Austin v. Presidio, case, 26 SW 775 (1894), it was held that the Commissioners' Court could hire an attorney to represent the Commissioners' Court as proceedings were instituted which affected their official acts and the county, as a whole, was interested in and affected by such proceedings. An individual employee of the county was not entitled to counsel as he was sued in his individual capacity, and such suit didn't interfere with his official acts.

In the present case neither Jefferson County nor the Commissioners' Court of that county were ever named as defendants. The design and effect of the suit against the Grand Jury members is not to obstruct or control the performance of their official acts, but to recover damages for alleged acts contrary to the legal performance of their duties. In view of the foregoing, it cannot be said that the county as a whole was interested or affected by such a suit. Hence, in our opinion the Commissioners' Court is not authorized to appoint an attorney for members of the Grand Jury in defending such suit.

S U M M A R Y

The Commissioners' Court of Jefferson County is not authorized to hire an attorney to defend the Grand Jury members since the county as a whole is not interested or affected.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Irwin R. Salmanson
Assistant Attorney General

IRS:bjh

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
John Reeves
Arthur Sandlin
Henry Braswell
Virgil Pulliam

REVIEWED FOR THE ATTORNEY GENERAL

BY: Houghton Brownlee, Jr.