



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

September 12, 1963

Honorable John T. Cox
County Attorney
Bell County
Belton, Texas

Opinion No. C-141

Re: Can a county issue time warrants to finance the purchase of a site for and construction of a building to house the offices of certain county officers and agencies?

Dear Sir:

In your original letter you have, in effect, asked two questions: (1) whether a county can issue time warrants to finance the purchase of a site for and construction of a "courthouse annex or office building" when such building, although located as close as practicable to the existing courthouse, is physically completely unconnected with the existing structure and separated from it by a street, and (2) whether a county can issue such time warrants for such a purpose where the building is located across the street from the existing courthouse but is physically connected with it by means of a tunnel beneath the street or by a passageway over the street.

In your second letter you have further stated that the specific purpose of the proposed building would be to house the offices of the following county agencies: (1) Bell County Department of Public Welfare, (2) Bell County Tax Assessor-Collector, (3) Bell County Juvenile Officer, (4) Bell County School Superintendent, (5) Bell County Agent, (6) Bell County Home Demonstration Agent, and (7) Bell County Health Unit.

The first matter to be determined in answering your inquiry is the power of the county, through the Commissioners' Court, to provide such a building at all, for although the Commissioners' Court does serve as the governing body of the county and although its control extends to nearly every

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phase of the county's business, its jurisdiction is not plenary. Its power must be specifically authorized by the Constitution or the statutes, or by necessary implication therefrom. Canales v. Laughlin, 147 Tex.169,214 S.W.2d 451 (1948).

Article 2351, Vernon's Civil Statutes, enumerates the various powers and duties of the Commissioners' Courts. Subdivision 7 of that statute provides that the court shall:

"Provide and keep in repair court houses, jails and all necessary public buildings."

The courts have interpreted this subdivision of Article 2351 in the case of Dancy v. Davidson, 183 S.W.2d 195 (Tex.Civ.App.1944, error ref.), in which the court said, at page 198:

"By the term 'public building' as used in the statute is meant a building used primarily for public or governmental purposes, that is, to house public or governmental agencies. . . . The Commissioners' Court is the legal body authorized under the statute to determine whether or not a 'public building' is 'necessary' and its decision relating thereto can not be disturbed by this court, except upon a showing of an abuse of discretion . . ."

As to the definition of what constitutes a "public building" under Article 2351, this office has written numerous opinions. Enclosed is Attorney General's Opinion No. 0-1952 (1940), written prior to the Dancy case, supra, which states, at page 5, " . . . that 'necessary public buildings' mean public buildings essential for the conduct of strictly 'county business'; and, when referring to office buildings, it means public buildings essential for housing the offices of county officers or agencies."

It is clear that the offices and agencies listed in your second letter, as set out above, are performing for the county governmental and public functions; that a building to

house such offices is a "public building" within the purview of Subdivision 7 of Article 2351; and that the Commissioners' Court has the statutory authority to determine whether such "public building" is "necessary".

Having determined that the Commissioners' Court of the county has the power to provide the building in question we must next determine whether the county can issue time warrants to pay for the purchase of the site and costs of construction of such a building.

It has long been the established rule in Texas that where, as here, the Commissioners' Court has the power to provide something -- in this case, "other necessary public buildings" under Subdivision 7 of Article 2351, and, under Subdivision 10 of Article 2351, to "audit and settle all accounts against the county and direct their payment" -- the power to incur debt for such purposes and to evidence the debt by issuance of time warrants is necessarily implied. San Patricio County v. McClane, 58 Tex.243 (1883); Stratton v. Commissioners' Court, 137 S.W.1170 (Tex.Civ.App. 1911, error ref.); Lasater v. Lopez, 110 Tex.179, 217 S.W.373 (1919).

A fairly recent statute, Article 2370b, Vernon's Civil Statutes, authorizes issuance by the Commissioners' Court of negotiable bonds of the county for the purpose of, among other things, the construction of county office buildings and the purchase of sites therefor. It has long been the established rule in this regard that the power to issue negotiable bonds is a different power from that to issue non-negotiable time warrants and that the grant of the power to issue such negotiable bonds confers upon the Commissioners' Court an additional power and does not deprive it of its existing authority to issue warrants. Lasater v. Lopez, supra.

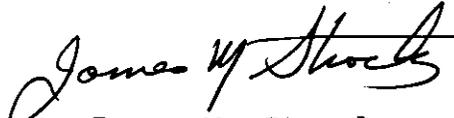
Thus the answer to your first question is that the Commissioners' Court of a county does have the power to purchase a site for and construct a county office building, across the street from and physically unconnected with the existing courthouse, to house the enumerated offices and to issue time warrants for this purpose. In view of our answer to your first question it is obvious that the answer to your second question would also be in the affirmative.

S U M M A R Y

The Commissioners' Court of Bell County has the authority to build a county office building, across the street from and physically unconnected with the existing courthouse, to be used for the stated purposes and can finance the purchase of the site for and construction of such a building by issuance of time warrants.

Very truly yours,

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By 
James M. Strock
Assistant Attorney General

JMS-s
Enclosure

APPROVED:
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APPROVED FOR THE ATTORNEY GENERAL
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