



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR  
ATTORNEY GENERAL

January 25, 1966

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

Opinion No. C-588

RE: Whether The Texas Highway Department has authority to spend highway funds to pay city street paving assessment on adjacent Highway Department owned borrow pit.

Dear Mr. Greer:

Your request for an opinion reads:

"Can the State Highway Department spend highway funds to pay assessments to improve city streets adjacent to land owned by the Highway Department for use as material source in the construction and maintenance of highways?"

Conference with your office and examination of your file on this subject reveals the following: In July, 1950, you obtained a deed to land in Houston, Harris County, Texas. A portion of that land was a borrow pit used by you as a source of material for construction and maintenance of highways, and is now being utilized as a dumping ground. It will be filled in the near future and declared surplus. After notice and hearing, the City of Houston in November, 1964, assessed all abutting property owners along a portion of Jensen Drive. Your curb and gutter assessment was \$6.95 per front foot on approximately 600 feet. The improvements do enhance the value of your property and you expect to sell the tract at a profit.

We are of the opinion that payment of this assessment falls within the authority spelled out in Opinion WW-585, issued to you April 2, 1959. You have authority to make payment from the appropriation made to the State Highway Department in Section No. 20, of the present biennium appropriation. The amount of payment is limited to the assessment, provided the assessment is not in excess of the enhancement. City of Houston v. Roy Blackbird, et al, Tex.Sup.Ct. 1965, 394 S.W.2d 159. We are aware of

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Opinions WW-292 and WW-336, cited by the comptroller, but do not consider either controlling in this fact situation.

SUMMARY

The State Highway Department has authority to spend highway funds to pay assessments to improve city streets adjacent to land owned by the Highway Department for use as material source in the construction and maintenance of Highways, provided the amount of payment is limited to the assessment and is not in excess of the enhancement.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By Vince Taylor  
Vince Taylor  
Assistant Attorney General

VT/vmo

APPROVED:  
OPINION COMMITTEE

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