



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

March 13, 1970

Honorable Ward P. Casey
County Attorney
Waxahachie, Texas

Attention: Hon. Wesley Gene Knize
Assistant County Attorney

Dear Mr. Knize:

Opinion No.M-596

Re: May Ellis County Road
District No. 16 pay
the City of Ennis for
removal of the City's
water pipeline from the
right-of-way of State
Highway No. 34, located
within the Road District.

You have requested an opinion of this office as to the following:

1. May Ellis County Road District Number 16, the bonds of which were issued for the procurement of additional right-of-way for the widening and expansion of State Highway Number 34 within the District, pay for the removal of water pipeline lying within the existing right-of-way of State Highway Number 34 which pipeline is the property of the City of Ennis, Texas (the portion in question being located outside the city limits of the City of Ennis and within Road District No. 16).

To answer this question properly, it first must be asked, if the Road District has lawful authority to expend funds from any source for the above stated purpose.

Road District No. 16 issued its bonds for right-of-way procurement as its contribution to the widening of State Highway No. 34, under various statutory authorities, including Article 6673e-1, Vernon's Civil Statutes. Such right-of-way, once procured and included within the State Highway System, same being the facts in our case, said highway is within the exclusive control and ownership of the State through its State Highway Commission. Article 6673 and Article 6674q-9, V.C.S.

The water pipeline in question was laid by the City within the State owned right-of-way either by agreement with the Highway Commission or is there at suffrance under the authority

granted in Article 1433a, V.C.S., which provides:

"Any incorporated city or town, ... is authorized to lay its pipes, ... for conducting water through, under, along, across and over all public roads and water lying and situated outside the territorial limits of such city or town in such manner as not to incommode the public in the use of such roads.... The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such city or town, at its own expense, to relocate its lines on a State Highway or county road outside the limits of an incorporated city or town, so as to permit the widening or changing of traffic lanes," (Emphasis added.)

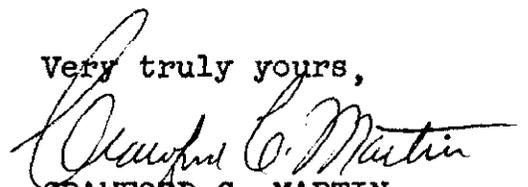
Article 1433a, quoted above, creates a statutory obligation upon a municipality to move its water pipeline from State Highway right-of-way at its own expense.

Where, as here, there is no property right to be acquired and the pipeline may be required to be removed at the expense of the City (Attorney General Opinion M-380 (1969)), it is our opinion that Ellis County Road District No. 16 does not have authority to pay the cost of removing City of Ennis pipeline lying within the right-of-way of State Highway No. 34, outside the city limits of the City of Ennis, with bond proceeds or any other Road District funds.

S U M M A R Y

Ellis County Road District No. 16 is without legal authority to pay out of bond proceeds or any other district funds for the cost of pipeline removal from the right-of-way of State Highway 34 which lies within the District, where the pipeline belongs to the City of Ennis, Texas and is located outside its city limits.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

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Prepared by Joseph H. Sharpley
Assistant Attorney General

APPROVED:
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