



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Hon. Fred T. Porter
County Attorney
Kaufman County
Kaufman, Texas

Dear Sir:

Opinion No. 0-413

Re: Purchase of right-of-way out of general funds - raising money for one purpose and spending it on another.

Your request for an opinion as to whether your Commissioners' Court can raise money for purchase of right-of-way without a bond issue has been received by this Department.

The answer to your question necessitates our consideration of the authority, if any, of your Commissioners' Court to purchase right-of-way out of the general funds of the county, since your road and bridge fund is already pledged. In passing on this question we can and will at the same time consider the authority of the Commissioners' Court to levy a tax for permanent improvements and pay for the right-of-way out of that fund.

Section 9, Article 8 of our Constitution reads, in part, as follows:

"...and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25th, 1983; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads: provided, that a majority of the qualified property taxpaying voters of the county voting at an election to be held for that purpose shall vote such tax, not to

exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county."

Thus, the Constitution makes a specific provision for raising funds for roads and bridges in the county, streets in the city and fixes a maximum rate of tax that may be levied for those purposes. It provides also that upon a vote of the people an additional levy of fifteen cents per hundred dollars may be made for maintenance of the public roads. We think this excludes the use of county funds raised under a specific constitutional levy for any other purpose. We do not believe that a tax levied for permanent improvements could be applied to the purchase of right-of-way.

The authority of the Commissioners' Court to transfer funds from one designated fund to another is limited by the constitutional restriction. The Constitution contemplates that as a matter of common honesty and fair dealing, tax money taken from the people ostensibly for one purpose shall be expended for that purpose alone. The provisions of Section 9, Article 8 were designed not merely to limit the tax rate for certain designated purposes, but to require any and all money raised by taxation for any purpose to be applied, faithfully, to that purpose as needed therefor and not to any other purpose or use whatsoever.

The people have fixed the maximum rate of taxation for designated purposes and have limited the expenditure of those funds to that purpose. Thus, the whole matter has been placed beyond the power and authority of the Commissioners' Court and even of the legislature itself. The court has no more authority to purchase right-of-way out of the general funds than it has to levy a tax for one purpose and spend the money for some other purpose. The law seems well settled that the Commissioners' Court cannot levy a tax for one purpose and use the money for another and it has no power to transfer monies on hand, raised under constitutional levies from one fund to another. For authorities see Carroll v. Williams, 202 S.W. 504; Ault v. Hill County, 116 S.W. 359; Sanders v. Looney, 225 S. W. 280.

Your letter recites that all of your road and bridge fund has been pledged. We do not know if that means your maximum constitutional levy of 15¢ for roads and bridges has been levied and exhausted. If your commissioners have not levied the maximum rate allowed by the Constitution and spent all of those funds, they may issue non-negotiable warrants, payable over a period of years. For authority on this proposition see Lasater v. Lopez, 217 S.W. 373.

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It is the opinion of this department that your
Commisssoners' Court does not have authority to purchase
right-of-way out of the general funds of the county or levy
a public improvement tax, and use the money for that purpose.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Morris Hodges
Assistant

MH:AW:wc

APPROVED:
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS