OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 4, 1959

Mr. I. Predecki
County Auditor
Galveston County
Galveston, Texas

Dear Sir:

Opinion No. O-543
Re: Can Galveston County expend tax funds derived from existing laws for preliminary expenses in connection with the construction of a bridge or tunnel from Galveston Island to Bolivar Peninsula, if such funds were available for this purpose; if not, would a local bill by the Legislature, authorizing the Commissioners' Court to levy a tax making the sum available for this purpose be constitutional with or without a vote of the taxpayers?

Your request for an opinion on the above stated question has been received by this office.

Counties, being a component part of the state, have no powers or duties except those which are clearly set forth and defined in the Constitution and statutes. The statutes have clearly defined the powers, prescribed the duties, and imposed the liabilities of the Commissioners' Court, the medium through which the different counties act, and from those statutes must come all the authorites vested in the counties. (Edwards County vs. Jennings, 33 SW 585, Tex. Jur. Vol. 11, page 563).

Section 9, Article 8 of the Texas Constitution prescribed the maximum rate of taxes for general purposes, for roads and bridges, for juries, and for permanent improvements, respectively. The Commissioners' Court has

Overruled by
O-6032
In so far as it conflicts

no power to transfer money from one fund to another or to expend for one purpose, tax money raised ostensibly for another purpose. The immediate purpose of the provision is to limit the amount of taxes that may be raised for these several purposes, respectively; but it is also designed to inhibit excessive expenditures for any such purpose, and to require that any and all moneys raised by taxation for any purpose shall be applied to that particular purpose and to no other. Ault vs. Hill County, 116 SW 359, Commissioners' Court of Henderson County vs. Burk, 262 SW 94, Carroll vs. Williams, 202 SW 504. Tex. Jur. Vol. 11, page 609.

The Supreme Court of Texas in the case of Carroll vs. Williams, 202 SW 504, supra, used the following language:

> "Section 9 of Article 8 of our State Constitution, inhibits any and all transfers of tax money from one to another of several classes of funds therein authorized, and, as sequence, the expenditure, for one purpose therein defined, of tax money raised ostensibly for another such purpose. The immediate purpose in so prescribing a separate maximum tax rate for each of the classes of purposes there enumerated is, no doubt, to limit, accordingly, the amount of taxes which may be raised from the people, by taxataion, declaredly for those several purposes or classes of purposes, respectively but that is not all; the ultimate and practical and obvious design and purpose and legal effect is to inhibit excessive expenditures for any such purpose or class of purposes. By necessary implication said provisions of Section 9 of Article 8 were designed, not merely to limit the tax rate for certain therein designated purposes, but to require that any and all money raised by taxation for any such purpose shall be applied, faithfully, to that

> particular purpose, as needed therefor, and not to any other purpose or use whatsoever. Those constitutional provisions control, not only the raising, but also the application, of all such funds; and such is the legal effect of Article 2242, (now Article 2352) and Article 7357 (now Article 7048) of the Revised Civil Statutes, when properly construed and applied. True, the Constitution does not say, in so many words, that money raised by the county, city or town, by taxation for one such purpose shall never be expended for any other purposes, not even for another of the five general classes of purposes defined and approved in said Section 9 but that, we think, is its plain and certain meaning and legal effect. The very definition of those several classes of purposes, and the declaration of authority to tax the people therefor, respectively, coupled, as they are, in each instance, with the limitation of the tax rate for that class, must have been predicated upon the expectation and intent that, as a matter of common honesty and fair dealing, tax money taken from the people ostensibly for one specified purpose shall be expended, as needed, for the purpose alone, as well as the tax rate for that particular class, in any one year, shall not exceed the prescribed maximum."

Section 52 of Article 3 of the State Constitution reads as follows:

> "The Legislature shall have no power to authorize any county, city, town or other political corporation or sub-division of the state to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever; or to become a stockholder in such corporation, association or company; provided, however, that under legislative

provision any county, any political subdivision of a county, any number of adjoining counties, or any political subdivision of the state, or any defined district now or hereafter to be described and defined within the state of Texas, and which may or may not include, towns, villages or municipal corporations, upon a vote of a two thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes to-wit:

"(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or irrigation thereof, or in aid of such purposes.

"(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purpose of irrigation, drainage or navigation, or in aid thereof.

"(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof."

Article 785, Revised Civil Statutes, provides that:

"The county commissioners' court of any county having a population in excess

of 50,000 inhabitants, according to the last United States census, may in their discretion, order an election to determine the propriety of a bond issue to provide for the construction and maintenance of causeways, viaducts, bridges and approaches across any river and bottoms within the limits of such county, irrespective of any municipal boundaries." See the case of Aransas County vs. Coleman-Fulton Pasture Co., 191 SW 553.

We are informed by the Comptroller's office that Galveston County has a population of 64,401 inhabitants according to the last Federal census, therefore, coming within the population brackets set forth in the above quoted statute.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this Department that Galveston County may expend moneys from the road and bridge fund of the county for preliminary expenses in connection with the construction of a bridge or tunnel from Galveston Island to Bolivar Peninsula if such funds are available, but that Galveston County does not have the authority to expend tax funds derived by virtue of existing laws from any of the other funds of the county for the preliminary expenses in connection with the construction of a bridge or tunnel from Galveston Island to Bolivar Peninsula.

You are further advised that it is our opinion that the County Commissioners' Court of Galveston County may, in their discretion, order an election to determine the propriety of a bond issue to provide for the construction and maintenance of a bridge from Galveston Island to Bolivar Peninsula, in compliance and under the provisions of Chapter 4, Title 22 of the Revised Civil Statutes.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By Ardell Williams

Ardell Williams
Assistant

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APPROVED: Geo. H. Mann