

8



Special :

OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. Sam T. Holt  
County Attorney  
Panola County  
Carthage, Texas

Dear Sir:

Re: Opinion No. 0-1091  
Distribution of County Funds de-  
rived from automobile registra-  
tions.

We are in receipt of your letter of  
June 28, 1939, which reads as follows:

"Please advise me concerning a  
county that the road precincts are di-  
vided into four precincts and their  
amount of roads to be maintained by  
said county funds that are derived  
from automobile registrations should  
be divided into four equal parts for  
each commissioner's precinct, or should  
the money be divided according to the  
amount or percentage of miles of roads  
to be maintained in each precinct, the  
one having the less percentage of roads  
to maintain to receive his proportion  
of said funds in accordance with his  
percentage of said roads to maintain  
and the one with the greater percent-  
age of roads to receive the greater  
amount of funds.

"Please advise me if there is a law  
governing as to how these funds shall  
be distributed."

Your question concerns the proper distri-  
bution of county road and bridge fund monies

Hon. Sam T. Holt, page 2

among the commissioners precincts of the county.

The county road and bridge fund proper is derived from two sources: county taxes and automobile registration taxes.

Since you mention "county funds that are derived from automobile registrations", we gather that you are principally interested in that portion of the county road and bridge fund accruing under Article 6675a of Vernon's Annotated Civil Statutes, The Automobile Registration Act.

Disposition of that portion of the county road and bridge fund consisting of automobile registration fees is governed by Section 10 of Article 6675a, supra. The pertinent provisions of said section read as follows:

"None of the monies so placed to the credit of the Road and Bridge Fund of a county shall be used to pay the salary or compensation of any County Judge or County Commissioner, but all said monies shall be used for the construction and maintenance of lateral roads in such county under the supervision of the County Engineer, if there be one, and if there is no such engineer, then the County Commissioners' Court shall have authority to command the services of the Division Engineer of the State Highway Department for the purpose of supervising the construction and surveying of lateral roads in their respective counties. All funds allocated to the counties by the provisions of this Act (Arts. 6675a-1 to 6675a-14; P.C. Art. 807a) may be used by the counties in the payment of obligations, if any issued and incurred in the construction of the

Hon. Sam T. Holt, page 3

improvement of all roads, including State Highways of such counties and districts therein; or the improvement of the roads comprising the County Road system."

The case of *Stovall v. Shivers*, Civ. App., 75 S.W. (2d) 276, Affirmed (Comm. App.) 103 S.W. (2d) 363, On page 367 of the latter opinion, contains the following statement with respect to the above quoted section:

"As to that portion of automobile registration fees retained by Van Zandt County, article 6675a-10, Vernon's Annotated Civil Statutes, expressly provides how same shall be expended, and for that reason it is obvious that article 6740 has no application to same."

We have been unable to find any other law governing the disposition of these funds from automobile registration fees in the county road and bridge fund. The purpose as stated in Article 6675a-10 is the "construction and maintenance of lateral roads" or "payment of obligations" incurred in the construction or improvement of all roads in the county - county or state. There is no formula for the spending of this particular portion of the county road and bridge fund. Article 6740 has no application, according to the decision of *Stovall v. Shivers*, supra. The responsibility for the proper expenditure of these funds rests primarily upon the Commissioners' Court. We wish to quote further from the opinion of the Comm. of App. of Texas, Sec. (a) in the *Stovall v. Shivers* Opinion.

"By article 2342 of the Revised Statutes, it is provided that the several commissioners, together with the

Hon. Sam T. Holt, page 4

county judge, shall compose the 'commissioners court.' Such court is manifestly a unit, and is the agency of the whole county. The respective members of the commissioners court are therefore primarily representatives of the whole county, and not merely representatives of their respective precincts. The duty of the commissioners court is to transact the business, protect the interests, and promote the welfare of the county as a whole. Among the powers conferred upon such court by article 2351 are the following: The power to lay out and establish, change and discontinue roads and highways, the power to build bridges and keep them in repair, and the power to exercise general control over all roads, highways, ferries, and bridges in their counties. They have the power to levy a tax not to exceed 15 cents on the \$100 valuation for roads and bridges. This fund is, of course, for the benefit of all roads and bridges of the county. These provisions of the law, as well as others which might be mentioned, clearly contemplate that the commissioners court of each county shall regard the roads and highways of the county as a system, to be laid out, changed, repaired, improved, and maintained, as far as practical, as a whole to the best interests and welfare of all the people of the county. It is clearly contemplated that all roads and bridges of the county shall be maintained, repaired, and improved when necessary, as the conditions may require, regardless of the precinct in which same may be located, so far as the funds will equitably justify."

Hon. Sam T. Holt, page 5

As for that portion of the county road and bridge fund consisting of county taxes, article 6740, Revised Civil Statutes, provides:

"The commissioners court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct. Money used in building permanent roads shall first be used only on first or second-class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable and having the greatest bonus offered by the citizens of money, labor or other property."

This article has been construed by the Comm. of App. of the State of Texas. *Stovall v. Shivers*, supra.

We quote therefrom as follows:

"It will be observed that the article in question provides that the road and bridge fund shall be judiciously and equitably expended on the roads and bridges of the county, and, as nearly as the condition and necessity of the roads will permit, shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct. In our opinion, there is obviously nothing in this article which compels the commissioners court to divide the road and bridge fund ac-

Hon. Sam T. Holt, page 6

ording to any fixed mathematical formula, and apportion same in advance for the purpose of being expended in any given precinct. The use of the word 'expended' to our minds clearly suggests that said funds shall be apportioned and paid out from time to time as the necessity for their use arises in the ordinary administration of the county affairs." \* \* \*

"Notwithstanding this, the commissioners court must give effect to said article 6740 except when the necessities of the roads and bridges require a departure from it. That article requires that the road and bridge funds of all counties shall be judiciously and equitably expended. It further requires that such funds shall, as nearly as the condition and necessity of the roads will permit, be expended in each commissioners precinct in proportion to the amount collected in such precinct. The dominant purpose of this statute seems to be to require that the road and bridge fund shall be expended in each commissioners precinct in proportion to the amount collected therein. In this regard, the statute means that each precinct shall prima facie be entitled to its own funds, and in the absence of any reasons to the contrary they should be so divided and expended. However, the duty to expend the funds in the proportion above mentioned is not an absolutely inflexible one. This is evident from the fact that the dominant purpose of the statute is qualified to the extent that the court by clear implication is

Hon. Sam T. Holt, page 7

given the right to expend the road and bridge fund in a proportion other than in the proportion in which they are collected when the conditions of the roads in the respective precincts creates a necessity to do so. We think, however, that the requirement to expend the fund in the proportion mentioned cannot be avoided except in cases or conditions of necessity. Of course, the commissioners court has the right to exercise its sound judgment in determining the necessity, but it cannot act arbitrarily in regard to such matter."

In answer to your question we wish to advise that the distribution of the monies in the county road and bridge fund is governed by article 6675a-10, Article 6740 and the rule laid down in the case of *Stovall v. Shivers*, supra.

As for that portion of the county road and bridge fund consisting of automobile registration fees paid into the fund of article 6675a, section 10, is controlling. It is our opinion that in expending this portion of the fund for the purposes expressly set out in section 10 of article 6675a, the commissioners' court of the county shall regard the roads and highways of the county as a system to be built, improved and maintained as a whole to the best interests and welfare of all the people of the county and of all the precincts of the county.

In respect to the county raised monies, they must be "judiciously and equitably" expended. While the statute (Art. 6740, supra) contemplates that the monies shall be expended in each commissioners precinct in proportion to the amount collected in such precinct, the commissioners' court is not compelled to follow any mathematical formula in dividing the fund.

Hon. Sam T. Holt, page 8

Cases or conditions of necessity justify the commissioners' court's departure from the rule which is that "each precinct shall prima facie be entitled to its own fund."

Under the statutes and the above decision neither of the standards set forth in your letter are controlling - "funds \* \* \* should be divided into four equal parts for each commissioners precinct, or should \* \* \* be divided according to the amount of percentage of miles of roads to be maintained in each precinct \* \* \*"

Trusting that we have fully answered your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Dick Stout*  
Dick Stout  
Assistant

*HOB*

APPROVED JUL 31, 1939  
13:04

*[Signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

