



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Leo Pressnell
County Attorney
Upshur County
Glimmer, Texas

Dear Sir:

Opinion No. G-1419

Re: Can a city lot be purchased with county funds, upon which lot State Highway Department now has house for its equipment and supplies and will continue to be so used by the highway Department?

Your telegraphic request for an opinion on the following question has been received:

"Please advise immediately if city lot can be purchased with county funds, upon which lot State Highway Department now has house for its equipment and supplies and will continue to be so used by the highway department."

It has already been held by this department in opinion No. G-1159 by the Hon. Ardell Williams, Assistant Attorney General, that the county commissioners' court cannot use money that is derived from the sale of bonds duly issued for the purpose of building county highways for purchasing a site for a state highway warehouse.

In your request you do not designate any particular county fund out of which payment of the purchase price of the lot is contemplated. The use of the words "county funds" necessitate an answer to the general question of whether or not any county funds might be used for the purpose of purchasing a city lot for the use of the State Highway Department.

The purchase of a city lot to be used by the highway department would be an action beneficial solely

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to the state and its agency, the State Highway Department.

It is our opinion that such use of any County funds is plainly prohibited by Article 6674q-4, Vernon's Annotated Civil Statutes, which reads as follows:

"All further improvement of said State Highway System shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. Surveys, plans and specifications and estimates for all further construction and improvement of said System shall be made, prepared and paid for by the State Highway Department. No further improvement of said System shall be made with the aid of or with any monies furnished by the counties except the acquisition of rights of way which may be furnished by the counties, their subdivisions or defined road districts. But this shall in nowise affect the carrying out of any binding contracts now existing between the State Highway Department and the Commissioners' Court of any county, for such county, or for any defined road district. In the development of the system of State Highways and the maintenance thereof, the State Highway Commission shall, from funds available to the State Highway Department, provide:

"(a). For the efficient maintenance of all highways comprising the State System.

"(b). For the construction, in cooperation with the Federal Government to the extent of Federal Aid to the State, of highways of curable type of the greatest public necessity.

"(c). For the construction, of highways, perfecting and extending a correlated system of State Highways, independently from State Funds."

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The purchase of a city lot to be used permanently and necessarily by the Highway Department would come within the coverage of such terms as "all further improvement of said Highway System", and "efficient maintenance of all highways", and "for the construction of highways, perfecting and extending a correlated system of State Highway, independently from state funds".

We have been unable to find any statutory authority conferred upon the Commissioners' Court of counties within the State of Texas to purchase a lot for the use of a state agency such as the Highway Department.

It is significant that Articles 6674c, 6674f, 6674g, Revised Civil Statutes, 1925, all dealing with county financial aid to the State Highway System, have been expressly repealed by Article 6674q-3, Vernon's Annotated Civil Statutes, Acts 1932, Forty-second Legislature, Third Called Session, page 15, Chapter 15, Section 3. Since that time, according to Article 6674q-4:

" * * * No further improvement of said System shall be made with the aid of or with any monies furnished by the counties except the acquisition of the rights of way which may be furnished by the counties, their subdivisions or defined road districts." * * *

See in addition to opinion No. 0-1159, above referred to, also, opinions Nos: 0-1240 and 0-893, copies of all three, of which, are attached.

It is our opinion that a city lot upon which lot the State Highway Department now has a house for its equipment and supplies and which lot will continue to be so used by the Highway Department, may not legally be purchased with county funds.

Trusting that the above fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Dick Stout
Dick Stout
Assistant



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Opinions Nos: O-1159
O-1260
O-893

APPROVED SEP 15, 1939

Gen. G. B. Mann
ATTORNEY GENERAL OF TEXAS