



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Harry Hines
State Highway Commissioner
Texas Highway Department
Austin, Texas

Dear Sir:

Opinion No. 0-1475
Re: Authority of Texas Highway
Department to improve streets
at Camp Eulen under stated
circumstances.

We acknowledge receipt of your letter of September 20, 1939, in which you request the opinion of this Department relative to the authority of the State Highway Department to improve the streets at Camp Eulen. In this connection we quote the following two paragraphs from your letter:

"The Thirty-sixth Division owns approximately 800 acres just west of Palacios, Texas; they have an excellent camp site and the expenditures, both Federal and State, reach an enormous sum yearly.

"Literally thousands of visitors are at this camp daily during the encampment; the streets in the camp are the best that can be had under the circumstances, but they are extremely dusty and under the heavy traffic to which they are subjected, this dust is very detrimental to the equipment of the Guard, and since we are the only asphalt squirting Department of State, would like to know if there is any law which would prevent the Highway Department from either putting on a light coat of asphalt or oiling these streets to eliminate the dust at a small expenditure of money, the cost of which I feel would be saved in one year's time in protecting the field equipment from the dust which now is so bad."

The statutes applicable to the situation quoted are contained in Sections 1 and 1a of Title 116 of Vernon's Annotated Civil Statutes. Article 6673 of said Chapter provides that the Highway Commission shall maintain the various state highways in Texas and that the Commission shall use the automobile registration fees in the State Highway Fund for the maintenance of such highways, providing further that the Commission "shall divert the same to no other use unless the Commission shall be without sufficient funds from other sources to meet Federal aid to roads in Texas, and in such case the Commission is authorized by resolution to transfer a sufficient amount from such Fund to match said Federal aid."

Article 6674 provides for the operating expenses of the Highway Department and reads as follows:

"The Legislature shall make appropriations for the maintenance and running expenses of the department, fix the compensation of the Highway Engineer and all other employees of the Department, and determine the number of such employees; and shall fix the compensation of the members of the Commission at not exceeding Twenty-five Hundred Dollars (\$2,500.00) per annum. The Board of Control shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for the furtherance of public road construction and the establishment of a system of State Highways as herein provided."
(Emphasis ours)

Article 6674a defines the term "highway" as "any public road or thoroughfare or section thereof, and any bridge, culvert or other necessary structure appertaining thereto." Article 6674e relates to appropriations from the Highway Fund and provides that the moneys deposited in said fund shall be subject to appropriation for the specific purpose of the improvement of the system of State highways by the State Highway Department. Article 6674g, Section 4, provides

for improvements which are under the control of the State Highway Department, all of which relate to the maintenance and construction of highways. Article 6674q, Section 5, relates to appropriations from the State Highway Fund, and in line with previous Articles quoted, provides that the fund shall be subject to appropriation by the Legislature for the specific purpose of the improvement of the system of State Highways.

Article 6674q, Section 6, relates to the allocation of funds from the gasoline tax, and makes a similar provision as to appropriation.

The highway section of the appropriation bill passed by the Regular Session of the 46th Legislature, after setting out the specific appropriation items, provides that the funds shall be paid out on warrants issued by the Comptroller in accordance with the provisions of Chapter 1, Title 116, Revised Civil Statutes, 1925, and continues as follows:

" . . . and provided further, that all funds or balances of funds on hand September 1, 1939, and all funds coming into the State Highway Fund and derived from registration fees or from other sources, after deducting the total of the specific appropriations herein made, are hereby appropriated to the State Highway Department for the establishment of a system of state highways and the construction and maintenance thereof, as contemplated and set forth in said Chapter 1, Title 116, and Chapter 186, General Laws of the Regular Session of the 39th Legislature, and amendments thereto."

You will note that no provision of the statutes or appropriation bill authorizes the Highway Department to expend funds for any purpose other than the construction or maintenance of the system of State Highways of the State of Texas. On the contrary, the Legislature has specified, both in the statutes and in the appropriation bill that the funds shall be expended for this purpose alone, and by clear unequivocal language has thus prohibited the expenditure of moneys in the State Highway Fund for any other purpose, regardless of how laudable it might be.

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It is, therefore, the opinion of this Department that the Texas Highway Department is without authority to improve the streets at Camp Hulen, since they do not comprise a part of the system of highways of this State.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ross Carlton*
Ross Carlton
Assistant

RC:LA APPROVED OCT 4, 1939

H. H. Moore
FIRST ASSISTANT
ATTORNEY GENERAL

