



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable R. E. McLaughlin  
County Attorney  
Dumas, Texas

Dear Sir:

*Mann Co*

Opinion Number 0-2019 - Supplement  
Re: Construction of Article 752b  
in regard to petition presented to  
commissioners' courts for bond  
elections for road improvements.

We respectfully refer you to our Opinion No. 0-2019 rendered to you by this department on March 18, 1940, pertaining to the construction of Article 752b in regard to petitions presented to the commissioners' court for bond election for road improvements. The opinion holds, in part, as follows:

"As we understand your problem from your opinion request and other correspondence on the matter, one petition for \$100,000 was filed for the purpose of constructing and improving highways. Later a second petition was presented for \$96,000 for the purpose of constructing exactly the same mileage with the exception of seven miles called for in the first petition. We have no doubt that under these facts the Commissioners' Court would not abuse its discretion in taking up and granting within a reasonable time the first petition filed, even though in the meantime the second petition had been filed. Indeed, we are unable to perceive how it can be said that the court had any discretion to refuse the first petition when presented. When the second petition was presented, covering the same mileage with the exception of seven miles called for in the first petition, we think the court would have a right to postpone its order on said petition because if the election on the first petition carried, the election on the second petition

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would be a useless act, and we know of no rule that would warrant the issuance of a mandamus to enforce the Commissioners' Court to perform such an act. See *Huggins vs. Vaden*, 253 S.W. 877.

"The purpose of a bond election is to vote for or against the issuance of bonds for a specific purpose and not to vote for one petition or another petition. The bond election must carry by a two-thirds majority vote, the money to be used for the purpose voted on. We know of no way that both elections could be held at the same time and accomplish the purpose for which a bond election is held.

"Therefore, it is our opinion that the proper procedure would be for the Commissioners' Court to call an election on the first petition. If this election carries, then the second petition becomes a moot question because the entire mileage provided for in the second petition will be improved with the bond money obtainable as a result of this election. If this election fails to carry by the required two-thirds majority then the court can call an election on the second petition."

Since that time we have received a letter from you requesting this department to more definitely outline the procedure to be followed under additional facts. We quote from your letter as follows:

"From the above we assume that you had come to the conclusion that the \$160,000 petition was presented to the Commissioners' Court sometime prior to the time that the petition for \$96,000.00 was presented. The fact of the matter is that both petitions came on to be considered by the Commissioners' Court at the same time, and for the first time. The meeting at which the petitions came on to be considered was a called session of the court, called for the purpose of taking up any petition or petitions presented to the court. However, the

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\$160,000.00 petition was filed with the County Judge, a few days prior to the filing of the \$96,000.00 petition, but both came on to be considered by the court on the same day.

"Since receiving your opinion in which you advised that the Commissioners' Court order an election on the \$160,000.00 petition, withholding its order on the \$96,000.00 petition until after the election, a number of those supporting the \$96,000.00 petition are raising the objection, that they would be discriminated against by the court if that procedure is followed. They feel that both petitions should be voted upon at the same time.

"We would appreciate very much if you would outline more definitely the procedure that the court should follow in handling this perplexing problem."

Under the facts set out in your letter, where both petitions were presented to the commissioners' court on the same date, it is the opinion of this department that it is entirely within the discretion of the court which petition shall first be submitted to the people. As stated in our original opinion, both elections cannot be held at the same time. As a practical matter, if the commissioners' court calls an election on the \$160,000 petition, which covers the entire 18 miles of road, and this petition carries, then the second petition will become a moot question because the entire mileage provided for in the \$96,000 petition, as well as an additional 7 miles, will be improved with the bond money obtainable as a result of this election.

Trusting that this satisfactorily answers your question, we are

APPROVED MAY 15, 1940

*Gracile Mann*

ATTORNEY GENERAL OF TEXAS

Very truly yours

ATTORNEY GENERAL OF TEXAS



BY *Claud O. Boothman*  
Claud O. Boothman  
Assistant