



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Affirmed by C-322

Hon. V. B. Gear
County Attorney
Blanco County
Johnson City, Texas

Dear Sir:

Opinion No. 0-2094
Re: Reconsideration of Opinion 0-1844.

This will acknowledge receipt of your letter of March 16, 1940, requesting that this department reconsider opinion No. 0-1844.

Your letter reads as follows:

"On January 11, 1940, I wrote your department for a ruling on the following:

"There is about \$2400.00 in the Blanco County Special Road Fund, which is maintained by five cent tax per hundred dollars per annum.

"There is about \$1900.00 in said fund, after the payment of a \$500.00 bond, and interest is paid. This tax was voted by the citizens of the entire County of Blanco.

"Road Precinct No. three, which embraces the same territory as Commissioner's Precinct No. Three, desires to use --- \$1500.00 of this fund to build and maintain County Road in Precinct No. Three.

"The department passed on this question for me as shown in your letter dated Feb. 6, 1940. The County Commissioner of Precinct No. 3 does not think that your ruling is correct,

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as he has been advised by private counsel that it is not correct, and that the County Commissioner's Court has the right to use a part of said money in Commissioner's Precinct No. three for building and maintaining roads therein.

"I am sending you herewith a copy of the order of the Commissioners Court on November 12th, 1930 in this matter, in which said election was held and notice thereof given under the provisions of Sec. 9, Art. 8 of the Constitution of the State of Texas, and article 6790, Chapter 4, Title 116, Revised Statutes of 1925.

"Precinct No. three now has a project proceeding in road building by W. P.A. and it needs some money to assist in said project in building said roads and maintaining them. The question he wants answered is:

"Can the Commissioners Court of Blanco legally permit the Commissioner of Precinct No. three to use a part of this money in the building of said roads in said precinct by the W.P.A. Project?

"This matter was passed on by Wm. J. Fanning and Grundy Williams, your assistants, formerly on Feb. 6, 1940.

"As you will see from the order dated Nov. 12, 1930 that the purpose of this tax was for building and maintaining the public roads of said Blanco County, Texas, hence the Commissioner of Precinct No. three wants to know if he would be permitted to use a part of said money in building and maintaining roads of said precinct No. 3 under the W. P. A. Project now in progress in said Precinct No. Three."

On Feb. 6, 1940, in our opinion No. 0-1844, in

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answer to the following question:

"Can the Commissioners' Court of Blanco County legally loan \$1500.00 from the Blanco County Special Right-of-Way Fund to Road Precinct No. 3?"

It was held that "the Commissioners' Court of Blanco County cannot lawfully loan the \$1500.00 taken from the Blanco County Special Right-of-Way Fund to Road Precinct No. 3". After carefully reconsidering the above mentioned question and the facts as presented therewith, we have concluded that opinion No. 0-1844 correctly answers the specific question stated above. However, in asking for a reconsideration of this opinion a different question is asked and additional facts are presented, which were not considered in the original opinion.

As stated in your letter, which is quoted above, there is about \$2400.00 in the Blanco County Special Road Fund, which is maintained by a five cent tax per hundred dollars per annum. There is now about \$1900.00 in said fund, after the payment of a \$500.00 bond, and interest is paid. This tax was voted by the citizens of the entire county of Blanco.

The question as now presented is as follows:

"Can the Commissioners Court of Blanco legally permit the Commissioner of Precinct No. three to use a part of this money in the building of said roads in said precinct by the W. F. A. Project?"

Section 9 of Article 8 of the State Constitution reads as follows:

"The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more

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then twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25th, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of public roads; provided, that a majority of the qualified property tax-paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. (Sec. 9, Art. 8, adopted election November 6, 1906; proclamation January 7, 1907.)"

Article 6790, Vernon's Annotated Civil Statutes reads as follows:

"The commissioners court shall order an election upon presentation to it at any regular session of a petition signed by two hundred qualified voters and property tax payers of the county, or a petition of fifty persons so qualified in any political subdivision or defined district of the county, requesting said court to order an election to determine whether said court shall levy upon the property within said territory a road tax not to exceed fifteen cents on the one hundred dollars worth of property, under the provisions of the amendment of 1889 to the Constitution of the State of Texas,

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adopted in 1890. Said court may act on such petition without notice; and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor. Upon a petition signed by a majority of the qualified tax paying voters of any portion of any county or of any political subdivision of any county, to said court requesting that such portion of said county or political subdivision shall be created as a defined district, the said court shall declare such territory a defined district and spread the order for same upon the minutes of said court; provided the petition aforesaid shall define by metes and bounds the territory desired to be so incorporated in such defined district."

The order of the commissioners' court bearing date of November 12, 1930, ordering an election to be held for the purpose of determining whether or not a special road tax of five cents on the one hundred dollars worth of property should be levied upon all the property of Blanco County, Texas, subject to taxation, for the purpose of building and maintaining the public roads in said county was held under the provisions of Section 9, Article 9 of the Constitution of Texas and Article 6790, and reads as follows:

"SPECIAL ROAD TAX ELECTION, November 12, 1930

"On this, the 12th day of November, A.D. 1930, this court being in regular session, with all members thereof being present, came on to be considered the petition of Wayne Smith and Two Hundred Seventy-three (273) others, re-property tax paying voters of Blanco County, Texas, praying that an election be held within and for Blanco County, Texas, to determine whether or not a special road tax of Five Cents on the One Hundred (\$100.00) Dollars worth of property shall be levied upon all the property of Blanco

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County, Texas, subject to taxation, for the purpose of building and maintaining the public road in said Blanco County, Texas.

"And it appearing to the court that said petition is signed by the required number of property tax paying voters of said County; it is therefore ordered by the court that an election be held within and for said County, on the 8th day of December, A.D. 1930, which date is not less than twenty, nor more than ninety days from the date of said order to determine whether or not a special road tax of Five cents on the One Hundred (\$100.) Dollars worth of property shall be levied upon all the property of Blanco County, Texas, subject to taxation for the purpose of building and maintaining the public roads in Blanco County, Texas. Said election shall be held and notice thereof given under the provisions of Sec. 9, Art. 8 of the Constitution of the State of Texas, and Art. 6790 Chapter 4, Title 116, Revised Statutes of 1925, and only qualified voters who are property tax payers be allowed to vote at said election.

"All voters desiring to support the proposition to levy said tax shall have written or printed on their ballots the words "For the Tax" and those opposed shall have written or printed on their ballots the words, "Against the Tax."

Said election shall be held at the usual voting places in said Blanco County, Texas, and the regular appointed and present acting officers of elections shall hold said election.

"The manner of holding said election shall be governed by the laws governing general elections in this State.

"A copy of this order signed by the County Judge of Blanco County, Texas, shall serve as a proper notice to be published in a newspaper

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published in said Blanco County, Texas, and shall cause copies of said notice to be posted at three public places in said county, one of which shall be at the courthouse door thereof."

As above stated, the purpose of the election was to determine whether or not a special road tax of five cents on the one hundred dollars worth of property should be levied upon all the property of Blanco County, Texas, subject to taxation for the purpose of building and maintaining the public roads in Blanco County, and said election resulted in the favor of levying said tax.

The paragraph in the above quoted section of the Constitution providing for the levying of a tax not to exceed fifteen cents on the one hundred dollar valuation of property relating to the maintenance of public roads was not a part of the original section; it was added by amendment in the year 1890 for the evident purpose of conferring upon counties the power to lay out, construct and maintain better systems of public highways than they were able to do under the restricted taxation before provided for. It would be a narrow interpretation to hold that the people adopting this amendment to the Constitution had in view to provide a fund to be used only in repairing roads already laid out, instead of the evident and broader policy to create a better and more extensive system of public highways. The purpose of the Legislature in making the amendment was to increase the capacity of the county to maintain a system of public roads and the word "maintenance" must be held to include all the things necessary to be done to accomplish the purpose. DALLAS COUNTY vs. FLOWMAN, 91 S. W. 222.

The above mentioned tax is levied by the county for the general purpose of building and maintaining the public roads of said county and is not restricted to any particular road or portion of the county.

We are of the opinion that the tax money levied and collected for the general purpose of building

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and maintaining the public roads in said county under the provisions of Section 9, Article 8 of the Constitution and Article 6790, may be expended by the county commissioners' court for the purpose of building and maintaining the public roads in said county as said court may in its discretion determine.

Therefore, you are respectfully advised that it is the opinion of this department that a part of the above mentioned money may be expended for the purpose of building and maintaining public roads in Precinct No. 3 as the commissioners' court may determine.

It is to be specifically understood that we are not passing upon the authority of said county to pay bonds and interest thereon out of the above mentioned fund.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:ob

APPROVED APR 5, 1940

Gen. B. Mann
ATTORNEY GENERAL OF TEXAS

