



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN

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ATTORNEY GENERAL

Honorable Bob McCampbell  
County Attorney  
Comanche County  
Comanche, Texas

Opinion No. 0-3137

Re: Where a county purchases a  
right-of-way for a State  
highway wholly within one  
commissioner's precinct,  
can the purchase price be  
paid by the whole county?  
And a related question.

Dear Sir:

Your recent request for an opinion of this department upon the questions as are herein stated has been received.

The questions presented in your inquiry are as follows:

"1. Where the county purchases right-of-way for State highway wholly within one commissioner's precinct, can the purchase price be paid by the whole county?"

We restate your second question as follows:

2. If the answer to the above question is yes, out of what fund or funds can the said purchase price be paid?"

Article 6674n, Vernon's Annotated Civil Statutes, reads, in part, as follows:

"Whenever, in the judgment of the State Highway Commission, the use or acquisition of any land for road, right of way purposes, timber, earth, stone, gravel or other material, necessary or convenient to any road to be constructed, re-constructed, maintained, widened, straightened or lengthened, or land not exceeding one hundred (100) feet in width for stream bed diversion in connection with the locating, re-locating or construction of a designated State Highway by the State Highway Commission, the same may be acquired by purchase or condemnation by the County Commissioners Court. Provided that the County in which the State Highway is located may pay for same out of the County Road and Bridge Fund, or any available county funds.

"Any Commissioners Court is hereby authorized to secure by purchase or by condemnation on behalf of the State of Texas, any new or wider right of way or land not exceeding one hundred

(100) feet in width for stream bed diversion in connection with the locating, relocating or construction of a designated State Highway, or land or lands for material or borrow pits, to be used in the construction, reconstruction, or maintenance of State Highways and to pay for the same out of the County Road and Bridge Fund, or out of any special road funds or any available county funds. \* \* \* ."

The County Road and Bridge Fund proper is derived from the following sources: county taxes, automobile registration fees, and all fines and forfeitures.

Disposition of that portion of the County Road and Bridge Fund consisting of automobile registration fees is governed by Section 10 of Article 6675a, Vernon's Annotated Civil Statutes. The pertinent provision of said Section reads 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 (Art. 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 or the 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 vs. Shivers, 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."

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 within the county. 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 vs. Shivers, supra*. The responsibility for the proper expenditure of these funds rests primarily upon the Commissioners' Court. We quote further from the above mentioned case as follows:

"By article 2342 of the Revised Statutes, it is provided that the several commissioners, together with the 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 interest, and promote the welfare of the county as a whole. Among the powers conferred upon such court by article 2391 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."

As for that portion of the county Road and Bridge Fund consisting of county taxes, Article 6740, Vernon's Annotated 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 Commission of Appeals of the State of Texas. Stovall vs. 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 according 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 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 so to do. We think, however, that the requirement to expend the

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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 view of the above mentioned Statutes and case, your first question is respectfully answered in the affirmative.

In reply to your second question, you are advised that it is our opinion that the Commissioners' Court may secure the above mentioned right-of-way in the manner provided by Article 6674n, supra, and "pay for the same out of the County Road and Bridge Fund, or out of any special road funds, or any available county funds," as stated in Article 6674n. However, this Statute does not authorize the Commissioners' Court to transfer money from one constitutional fund to another, or to expend, for one purpose, tax money raised ostensibly for another purpose. The Constitution prescribes the maximum rate of taxes for general purposes, for roads and bridges, for juries, and for permanent improvements, respectively. The moneys arising from taxes levied and collected for each of the enumerated purposes are constitutional funds. (Carroll v. Williams, 202 S. W. 504; Tex. Jur., Vol. 11, p. 609). Neither can the Commissioners' Court transfer or expend moneys obtained by the issuance and sale of bonds for any purpose other than the specific purpose for which said moneys were raised and obtained by the issuance and sale of said bonds. We think the term "available county funds" as used in the Statute means such funds as have not been raised, collected, or appropriated for a specific purpose.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams  
Ardell Williams  
Assistant

AW:RS:PC

APPROVED FEB 27, 1941

/s/ GERALD C. MANN  
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE  
BY /s/ RWF  
CHAIRMAN