



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable George P. Hudson  
County Attorney  
Jones County  
Anson, Texas

Dear Sir:

Opinion No. 0-3358

Re: What authority does the commissioners' court have to apportion the automobile registration fees to the various precincts and under what condition does the court have authority to change the apportionment?

Your request for our opinion on the hereinafter stated questions has been received by this department. We quote from your letter as follows:

"At present the apportionment of Automobile Registration fees is as follows in this county: Precinct #1 ---25%, Precinct #2 ---29%, Precinct #3 ---23%, Precinct #4 ---23%.

"What authority does the court have to apportion the automobile registration fees to the various precincts, and under what conditions does the court have authority to change the above mentioned apportionments?

"It appears to me that Articles 6740 and 6675a-10 answers the above questions, and say that the moneys paid into said fund shall be expended in each precinct according to the amount collected from each precinct unless in the sound discretion of the court a necessity exists to expend said fund in another proportion due to conditions of roads in the various precincts. The court is in question as to what is meant by 'necessity' and what latitude they are allowed in exercising their judgment."

From our understanding of the facts as stated in your letter, the fees derived from automobile registrations in Jones County are now being divided and distributed to the several precincts in the proportions mentioned by you. Each commissioner then spends the amount allocated to his precinct within the boundaries of such precinct.

After providing that the automobile registration fees which the county is permitted to retain shall be placed to the credit of the Road and Bridge Fund of the county, Section 10 of Article 6675a, prescribes the disposition of such portion of the Road and Bridge Fund 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 (Arts. 6675a-1 to 6675a-14; P. C. Art. 307a) may be used by the counties in the payment of obligations, if any, issued and incurred in the construction of 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."

Article 6740, Vernon's Annotated Civil Statutes provides as follows:

"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

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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."

While the fees from automobile registrations are placed in the county's Road and Bridge Fund, the expenditure of this portion of said fund is not subject to the requirement of Article 6740, that "it shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct." This provision in Article 6740, has reference only to that portion of the Road and Bridge Fund derived from county taxes. As stated in the case of *Stovall v. Shivers* (Civ. App.), 75 S.W. (2d) 276, affirmed (Com. App.) 103 S.W. (2d) 363, at page 367 of the latter opinion:

"As to that portion of automobile registration fees retained by Van Zandt county, article 6675a-10, Vernon's Ann. Civ. St., expressly provides how same shall be expended, and for that reason it is obvious that article 6740 has no application to same."

Article 6675a-10 states that such funds shall be used "for the construction and maintenance of lateral roads in such county," or "in the payment of obligations, if any, issued and incurred in the construction or the improvement of all roads," in the county.

The responsibility for the proper expenditure of these funds, therefore, necessarily rests upon the commissioners' court. In this connection we quote further from the opinion of the Commission of Appeals of Texas, Section A, in the *Stovall v. Shivers* 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 interests, and promote the welfare of the county as a whole. Among the powers conferred upon

such court by article 2351 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. This being true, we think that a commissioners court cannot voluntarily disable itself from performance of this general obligation by arbitrarily dividing the road and bridge fund according to some fixed standard, and apportioning same to be expended in a particular precinct, to the detriment of roads and bridges in other precincts."

Opinion No. C-1091 of this department, holds that Article 6675a-10 controls the expenditure of that portion of the Road and Bridge Fund derived from automobile registration fees, and that in expending the same, the commissioners' court shall regard the roads and highways of the county as a system to be built, improved and maintained as a whole to the best interests and welfare of all the people of the county and of all the precincts of the county. We are enclosing herewith a copy of said opinion for your information and convenience.

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You are respectfully advised that it is the opinion of this department, under the facts stated, that the commissioner court of Jones County is not authorized to allocate the automobile registration fees to the various precincts in the proportion stated in your letter if such an apportionment would result in one precinct being able to maintain a better class of roads and highways than other precincts. These funds should be expended in such a manner as to give to the county as a whole a uniform system of roads and highways without reference to precinct lines. This responsibility rests upon the commissioners' court and must be determined by them in accordance with all the facts and circumstances involved.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Edgar Pfeil*  
Edgar Pfeil  
Assistant

EP:js  
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APPROVED APR 8, 1941

*Gerardo M. ...*  
ATTORNEY GENERAL OF TEXAS

