



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable L. L. Geren  
County Attorney  
Limestone County  
Groesbeck, Texas

This Opinion Overrules in Part  
Opinion No. 0-4006.

Dear Sir:

Opinion No. 0-4428

Re: Is there any legal authority  
for operating the food stamp  
plan as outlined, and related  
questions?

Your letter of February 13, 1942, requesting the  
opinion of this department on the questions stated therein  
reads in part as follows:

"The County Auditor of Limestone County  
has requested an opinion on the validity of  
the United States Government Food Stamp Plan  
as operated by the Commissioners' Court.

"She states that the Commissioners' Court  
passed an order to take all necessary steps to  
set up the food stamp plan in Limestone County  
which includes the issuance of \$10,000.00 Gen-  
eral Fund Warrants on Limestone County for the  
purpose of creating a revolving fund. She also  
states that the budget for 1942 takes up the  
entire expected income for the General Fund for  
the year 1942.

"Evidently the court would amend the bud-  
get declaring an emergency and stating that a  
case of grave public necessity existed and that  
this was necessary to meet unusual and unfore-  
seen conditions just as the Legislature has  
done recently in remitting taxes etc.

"Will you please advise me as to the follow-  
ing:

"(1) Is there any legal authority for operating the food stamp plan as above outlined?

"(2) Can the Commissioners' Court now declare that an emergency and a case of grave public necessity exists and that this is necessary to meet unusual and unforeseen conditions, thus permitting the budget to be amended?

"(3) Can the Commissioners' Court legally issue general fund warrants for the purpose of creating a revolving fund?"

Article 2351-17, Vernon's Annotated Civil Statutes, empowers the Commissioners' Court of any county of this State to create a revolving fund or funds and to make appropriations thereto out of the general revenue of said county or counties to be used by said county or counties in cooperation with the United States Department of Agriculture to aid and assist in carrying out the purposes and provisions of an act of Congress of the United States pertaining to the distribution of commodities of persons in need of assistance, under the direction of the United States Department of Agriculture. The only fund out of which stamps, as above mentioned, may be purchased or a revolving fund set up, is a general fund of a county. If the funds are available, the revolving fund and the necessary operating expenses can be set up out of the general fund. Under the facts stated in your letter, there are no available funds in the general fund of your county which can be used in setting up the revolving fund. We think that the proposed issuance of warrants as described in your letter would be in effect borrowing money by the county for the above mentioned purpose.

It is stated in Texas Jurisprudence, Vol. 11, p. 664:

". . . The commissioners' court has no authority to borrow money by means of warrants; this may be done only by the issuing of bonds. . . ."

The case of Ashby, et al v. James, et al, 226 S. W. 732, among other things, holds that counties cannot borrow money by issuing warrants.

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It is stated in Corpus Juris Secundum, Vol. 20,  
p. 1078:

"Counties, being creatures of statute,  
. . . and possessing no powers not granted  
by constitutional provision of statute, . . .  
are generally held to have no power to borrow  
money, unless expressly authorized so to do  
by constitutional or statutory provision;  
and this power will not be implied."

With reference to setting up a revolving fund by  
virtue of Article 2351-17, supra, it is stated in our opin-  
ion No. 0-4006:

"If no funds are available and the  
amount required does not exceed the amount  
of current revenues reasonably expected or  
contemplated by the county, ordinary warrants  
may be issued for the same."

We think that this statement is contrary to the  
above mentioned authorities and therefore expressly over-  
rule that portion of said opinion No. 0-4006 quoted above.

We have carefully considered the cases of Bexar  
County v. Batley, 150 S. W. (2d) 980; Spears v. City of South  
Houston, 150 S. W. (2d) 74 and Bexar County, et al v. Mann,  
157 S. W. 134, and we do not think that these cases are ap-  
plicable to the questions here involved and do not authorize  
the borrowing of money by a county by issuing warrants as  
above mentioned.

In view of the foregoing authorities, we respect-  
fully answer your first and third questions in the negative.  
As we have answered these questions in the negative your  
second question requires no answer.

Yours very truly

APPROVED FEB. 26, 1942

ATTORNEY GENERAL OF TEXAS.

/s/ Grover Sellers

By

FIRST ASSISTANT  
ATTORNEY GENERAL

Ardell Williams  
Assistant

AW:GO

APPROVED OPINION COMMITTEE BY BWB CHAIRMAN