



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. L. Washburn
County Auditor
Harris County
Houston, Texas

Dear Sir:

Opinion No. 0-4529
Re: Authority of county to support and maintain Office of Director of Civilian Defense.

We have your letter of April 9th, which we quote:

"On September 8, 1939, the President, by an executive order, Number 8243, created the Office of Emergency Management, the actual creation of that particular office being by an administrative order dated May 25, 1940. On May 20, 1941, by Executive Order Number 8757, the President created the 'Office of Civilian Defense' as a part of the Office of Emergency Management. For convenient reference, I attach a copy of Executive Order Number 8757.

"The Director of the Office of Civilian Defense in turn designated the Governors of the various States as Directors or Coordinators of the defense activities in their several States. In turn, the Governor of Texas appointed the County Judge of Harris County and the Mayors of the fourteen incorporated municipalities in Harris County as 'Coordinators of Civilian Defense, with all of the legal rights and responsibilities appertaining to such positions.' The quoted language is taken from the form of commission issued by the Governor.

"So far as I am informed, the Governor has not issued specific proclamations or other instructions authorizing or directing the various Coordinators appointed in Harris County to adopt

the plan for civilian defense which has been placed in effect by a tentative and somewhat loose agreement among the several Coordinators appointed in Harris County. The County Judge and the Mayor of the City of Houston, as the appointed Coordinators of the two largest governmental units in Harris County, have entered into an agreement with the Mayors of the other municipalities, by which Colonel Ike Ashburn was appointed Director of Civilian Defense with general authority to coordinate such defense activities in Harris County. As I understand the present arrangement, each of the municipalities involved, with the exception of the County of Harris and the City of Houston, proposes to direct all of its own expenditures determined by it to be necessary in connection with the defense activities. It is further proposed by the County Judge and the Mayor that the County of Harris and the City of Houston shall contribute funds for the support, operation, and maintenance of the Office of the Director of Civilian Defense and to defray the expenses which are set forth in the budget submitted by the Director of Civilian Defense, a copy of which is attached. Generally, the type of expenditure proposed consists of the employment of the necessary personnel, outlays for telephone lines, expenditures and maintenance of motor equipment, and the purchase of warning signals to be installed and maintained by the Director.

"The suggested method of operating the Office of the Director of Civilian Defense, and the activities which will be carried on under his direction and supervision, is by direct financial contribution, or, alternatively, by the contribution of equipment, personnel, and supplies for the operation and maintenance of the civilian defense setup. This, therefore, immediately raises the question of the authority of County officers to contribute funds for this purpose, or the lending of employees, supplies, and equipment. The proposed course of action presents to my mind the following questions which are respectfully submitted to you for determination:

"(1) May the County legally contribute to the support and maintenance of the Office of the Director of Civilian Defense of Harris County money from its General Fund, or its Road and Bridge Fund, or both, for the payment of the type of expenses outlined in the budget submitted by the Director of Civilian Defense?

"(2) If the County and its officers have such authority, may the County, acting through the Commissioners' Court, enter into a joint contract with the City of Houston, either alone or jointly with the various other municipalities in Harris County, to provide for the operation of the Office of the Director of Civilian Defense, and the contribution of funds for such purpose out of the General Fund and the Road and Bridge Fund?

"(3) If the County may legally enter into such a contract as is suggested in Question (2) above, may the County then pay over its pro rata share of the funds fixed by the contract to the Director for expenditure, or must any such contract provide that expenditures shall be made only in accordance with the laws providing for advertisement for bids, purchases, audits, and other laws regulating the accounting for and expenditure of County funds, such as the Depository Law, et cetera?

"(4) In the event you should be of the opinion that the County may not legally directly contribute money from its General Fund, or its Road and Bridge Fund, as suggested in Question (1) above, may it, without violating the law, acting through the Commissioners' Court and its duly constituted officers, such as the Sheriff, the Assessor and Collector of Taxes, and other similar officers, contribute supplies, machinery, equipment, and personnel for the purpose of operating and maintaining the Office of Civilian Defense, such operation and maintenance to be subject to the direction of the appointed Director for Harris County?

"The object to be accomplished is not only a laudable one, but is undoubtedly a public

matter. It seems to me, however, that the authority of the County officers and the Commissioners' Court, in connection with such matter, is limited. Harris County happens to be situated in a particularly vital area, since it is the seat and center of much work and manufacture directed to the important end of a successful prosecution of the war. It is, as you know, the center of oil activities and the various refineries themselves are at the present time largely engaged in the manufacture of toluol and other ingredients or bases of explosives. There is, therefore, a desirable object to be accomplished by the operation of the Office of Civilian Defense.

"The Commissioners' Court is authorized by the provisions of Article V, Section 18, of the Constitution, which provides in part, as follows:

"The county commissioners so chosen, with the county judge, as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed."

"The general powers of a Commissioners' Court are provided in Article 2351, Vernon's Annotated Texas Statutes. In addition to the general powers there enumerated, there are various special powers enumerated in the statutes which have been passed from time to time. Thus, the Forty-Seventh Legislature passed an act which is now carried as Article 2351a-1, Vernon's Annotated Texas Statutes, which authorizes the County Commissioners' Court to 'furnish fire protection and fire fighting equipment to the citizens of such county residing outside the city limits of any city, town, or village within the county and/or adjoining counties.' This statute specifically authorizes the Commissioners' Court to make contracts with 'any city, town, or village within the county and/or adjoining counties, upon such terms and conditions as shall be agreed upon between the Commissioners' Court and the governing body of

such city, town, or village, for the use of the fire trucks and other fire fighting equipment of the city, town, or village.' The act concludes with a proviso reading:

"Provided, however, that any fire equipment purchased by any County shall be done only by a majority vote of property owning taxpayers and qualified voters of such county at a county-wide election called for such purpose.'

"There are also provisions in the Public Health statutes, such as Article 4418f, authorizing the expenditure by the Commissioners' Court of County funds for public health and sanitation. Article 5823 authorizes the Commissioners' Court and the council of any city or town to appropriate and expend money for the expenses of troops, batteries, companies, signal corps, hospital corps, and bands of the active militia of this State located in such counties, cities, or towns, not to exceed the sum of \$100 per month for the expense of any one organization. Article 5891a authorizes the County Commissioners' Court, city authorities, communities, and civic and patriotic organizations to provide funds, armories, equipment, material, transportation, or other appropriate services or facilities, to the Texas Defense Guard. There is also Article 6144 providing for a 'Home Guard.' This latter statute seems to contemplate the organization of a guerrilla band which will be authorized, or the members of which will be authorized, to carry pistols and other weapons when 'called to actual duty by the sheriff.' The act provides that 'counties, cities, and towns may through their lawful governing bodies appropriate from their public treasuries, moneys to provide arms and ammunition for such Guard under such rules as they may prescribe, and those receiving arms from the county shall return all guns and ammunition to the county judge when not on duty.' The type of expenditure authorized by these various statutes is very similar to the type of expenditure now proposed to be made and about which the above questions are propounded. The fact that the Legislature found it necessary to pass statutes

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specifically authorizing the Commissioners' Court to make expenditures of the types above noted impels the necessary conclusion that without such statutes the Court would have no authority to make such expenditures.

"So far as I have been able to learn there is no statute specifically authorizing any expenditure in connection with the 'Office of Civilian Defense' of any of its branches. Our Courts have repeatedly said in the past that the powers of the Commissioners' Courts and officers of counties are limited to those expressly granted to them by the Constitution and statutes, and such powers as are necessarily implied from those expressly granted.

"Willa County vs. Lampasas County, 40 S.W. 552, 90 Texas 603;

"Commissioners' Court of Madison County vs. Wallace, et al, 15 S. W. (2) 555;

"Von Rosenberg, et al. vs. Lovett, 173 S.W. 508 (Error Refused);

"Commissioners' Court of Harris County vs. Kaiser, et al., 23 S. W. (2) 840 (Error Refused);

"City of Breckenridge vs. Stephens County, (Commission of Appeals) 120 Texas, 318, 40 S.W. (2) 43;

"Nunn-Warren Publishing Company vs. Hutchinson County, 45 S. W. (2) 651 (Error Refused);

"Hogg vs. Campbell, et al., 48 S. W. (2) 513; and,

"Landman vs. State, 97 S. W. (2) 264 (Error Refused).

"It is generally recognized that the Commissioners' Court may act through agents for certain purposes, although their authority to so act seems somewhat limited by the statutes. Article 1580, Revised Civil Statutes, 1925. The

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Legislature may commit county business to some other agency than the Commissioners' Court. Austin Bros. vs. Patton, et al., (Commission of Appeals), 288 S. W. 182. But apparently the authority of the Commissioners' Court to delegate its authority is very limited. Thus it has been held that the duty of the County Commissioners to audit all claims against the county and to order paid only those found to be just, is judicial and its performance cannot be delegated to another. Padgett, et al. vs. Young County, et al., 204 S. W. 1046, (Error dismissed, 229 S. W. 459). Presumably the same rule would apply to me, as County Auditor, in the discharge of duties imposed upon me by such statutes as Articles 1660, 1661, and Subsection L, Section 19, of Article 3912e.

"There are numerous provisions of our Constitution disclosing a general policy of confining the expenditure of tax funds to stated public purposes, and specifically denying even to the Legislature authority to contribute those funds to purposes other than those for which they were created. See: Article III, Sections 44, 51, 52, and 53; Article I, Sections 3 and 16; and Article XVI, Section 6. Our Supreme Court has also expressly declared that County Commissioners' Courts have no authority to transfer money from a fund created for one purpose to a fund created for some other purpose. Carroll, et al. vs. Williams, County Treasurer, et al., 109 Texas 155, 202 S.W. 504.

"I do not understand that the Governor, in his designation of the County Judge, has in any sense undertaken to authorize the expenditure of any funds for any purpose. The Governor is, of course, given somewhat broad authority by the express provisions of Section 7, Article IV, of the Constitution, which reads:

"He shall be Commander-in-Chief of the military forces of the State, except when they are called into the actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, repel invasions, and protect the frontier from hostile incursions by Indian or other predatory bands."

"Any expenditures which might be undertaken in connection with the above section of the Constitution, or any other section of the Constitution authorizing the Governor to act, would not, so far as I am informed, give the Governor any authority to authorize county officers to spend money from county funds in the furtherance of the ends so authorized. It seems to me that such activities on the part of the Governor must necessarily be financed from appropriations made by the Legislature, or under some act of the Legislature specifically authorizing the Commissioners' Court, or other county officers, to spend money in aid of activities undertaken by the Governor under constitutional authority.

"It seems further apparant to me from the executive order promulgated by the President creating the Office of Civilian Defense that it was contemplated that the Federal Government would defray the actual expenses incident to the setup of that organization. The order seems to contemplate the States as units in the Civilian Defense authority. Of course, counties are declared by our Constitution to be legal subdivisions of the State. Article XI, Section 1, I understand the rule to be that Commissioners' Courts are without any legislative powers whatsoever, and, as the governing bodies of subdivisions of the State, must rely upon the Legislature for authority to expend funds. I have been unable to find any authority for the expenditure proposed in this instance, either in the form of a direct authorization by the Legislature, or in the form of an implication in existing statutes. I have enumerated certain statutes above from which it might be said that certain powers could be inferred, but I do not believe that they are broad enough to authorize expenditures of the type here proposed.

"I, therefore, respectfully submit for your determination the questions above enumerated, and have appended the citation of authorities and discussion in the hope that they will be of some assistance in properly determining the questions submitted.

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"A recent opinion of your department which seems to me to have some bearing upon one phase of the question presented is your Opinion O-4483, dated March 16, 1942, addressed to Honorable Burl Brittain, County Auditor, San Patricio County, Sinton, Texas, in regard to the payment of expenses of the County Judge incurred as Coordinator of Civilian Defense."

We thank you for the excellently written opinion contained in your letter. Since you accurately state the law as we understand it, we adopt the views expressed by you as the opinion of this Department. It follows that your first and fourth questions are answered in the negative, and your second and third questions do not require an answer.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild

R. W. Fairchild
Assistant

RWF:LM

APPROVED APR 23, 1942

Oct 1942
Zollie C. Steakley
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY *BWB*
CHAIRMAN