

Last copy



**THE ATTORNEY GENERAL  
OF TEXAS**

GROVER SELLERS

AUSTIN 11, TEXAS

~~WALTER S. WALKER~~  
ATTORNEY GENERAL

Honorable Tom Seay  
County Attorney  
Potter County  
Amarillo, Texas

Dear Mr. Seay:

Opinion No. O-7386

Re: Authority of a gas company to  
construct its lines across a public  
road without authority from the com-  
missioners' court of the county.

You request an opinion from this department upon the above subject  
matter as follows:

"A public utility, a gas company which transports and sells gas,  
principally to towns and cities, relying on Article 11436, Vernon's Civil  
Statutes, has constructed one or more of its distributing lines upon and  
across county first-class public roads at points wholly without any city  
or town (roads not designated as State highways), without first obtaining  
any character of permission or authorization from the commissioners' court  
of the county, or any other source.

"It is the contention of the county that the lines, as constructed  
across the public road and through which gas is transported, is a constant  
danger to traffic on the roads at the points where it passes over the line.  
Also, it is the contention of the county that the lines so constructed with-  
out any semblance of authority is a trespass. All of which it has called to  
the attention of the gas company repeatedly, to no avail.

"Having been called upon by the court for an opinion as to the  
county's rights in the premises, and being in doubt as to the advice that  
should be given, we here seek the opinion of your office to the extent  
you are in position to advise: (1) Whether or not the gas company was  
within its rights under the statute to construct its lines across the  
road as aforesaid, and (2) within its rights and yet the construction is  
such as to render the highway at such points dangerous, what are the  
remedies of the county in its effort to abate this dangerous condition  
brought about by the construction of the lines across the highways in  
the manner that it has been constructed?"

You are respectfully advised that the authority to construct the gas line of the company across the public road is governed by Article 1436 of the Revised Civil Statutes. The authority emanated from the State and not the county.

We hand you herewith copies of the following opinions, all of which have decided or discussed this very question: O-1805, O-2442, O-2978, O-5726, and 6791-A.

If the gas company has been guilty of any negligence in the manner in which it has laid its pipes across the public road, or has been guilty of negligence in the manner of maintaining the same, as contradistinguished from the construction of the line, resulting in pecuniary loss to the county, or any individual, the county or the individual injured, as the case may be, might have a cause of action for damages thus occasioned, but neither would have the right to abate the line.

We trust that what we have said sufficiently answers your inquiries.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Ocie Speer

Ocie Speer  
Assistant

APPROVED SEP. 11, 1946  
/s/ Grover Sellers  
ATTORNEY GENERAL OF TEXAS

OS-MR:egw  
Enclosures

APPROVED  
OPINION COMMITTEE  
BY B W B  
Chairman