



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

February 21, 1947

Honorable D. D. Williams
County Attorney
Throckmorton County
Throckmorton, Texas

Opinion No. V-40

Re: Authority of the
Commissioners' Court
of Throckmorton County
to sell personal prop-
erty such as worn out
road machinery with-
out first having ad-
vertised the same for
sale on open bids; and
authority of the Tax
Collector to make sum-
mary levy on personal
property as provided
in Article 7268.

Dear Mr. Williams:

In your letter of Feb. 4, 1947, you present for the opinion of this department two questions. These are as follows:

"1. Is the Commissioners' Court authorized to sell personal property such as worn out road repair machinery and like items without publicly advertising the same as being for sale and selling the same at public auction? (Each of the commissioners of this county have in their charge worn out and useless machinery and tools which they wish to dispose of immediately. They want to know the proper and legal procedure for doing so.)

"2. Can the tax collector of the county levy on personal property which is about to be removed from the county before he has completed his tax rolls under Art. 7268, Texas R. C. S. 1925. (There are several drilling rigs in the

county which are due to be moved in the near future. The taxes are not delinquent on them since they are only subject to taxation for the year 1947 in this county. The tax collector would like to know whether he would be premature in his action if he attempted to levy on a rig now if the owners thereof attempt to remove the same from this county. Please send me all opinions which have been rendered construing the above statute.)"

We shall answer these questions in the order stated.

The jurisdiction of the Commissioners' Court is defined in the latter part of Sec. 18 of Art. V of the Constitution in the following words:

"The county commissioner so chosen, with the county judge as presiding officer, shall compose the county commissioners court, and shall exercise such powers and jurisdiction over all county business as is conferred by this constitution and the laws of the State, or may be hereafter prescribed." (Emphasis ours)

It should be observed, however, that there is an express limitation upon the jurisdiction thus conferred, that is, it must be "county business." The term "county business" should be given a broad and liberal construction, so as not to defeat the purpose of the law. *Glenn v. Dallas County Bois d'Arc Island Levy District*, (Civ. App.) 282 S. W. 339. Moreover the Commissioners' Courts have implied authority to do what may be necessary in the exercise of the duties or powers expressly conferred upon them. *City National Bank v. Presidio County*, (Civ. App.) 26 S. W. 775.

In the case of *Stovall v. Shivers* (Com. App.) 103 S. W. (2d) 363, Judge German, speaking for the Court, said:

"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."

Thus in the exercise of the powers expressly conferred by statute, or by reasonable inference therefrom the commissioners' Court undoubtedly has the power to purchase such road machinery and equipment as are reasonably necessary to carry out the powers conferred upon it by Art. 2351, as suggested above. It does not necessarily follow, however, that it has the same power to sell such property, and such powers as it does have in this respect must arise by necessary implication in transacting "county business." Is the sale of worn out and antiquated personal property of the County by the Commissioners' Court "county business"? If so, and we think it is, then such power is legally vested in the Commissioners' Court.

Such property when originally purchased becomes the property of the County, and not of the respective Commissioner's precinct to which it might be allocated. The County is in a sense a public corporation, and must, therefore, receive all its powers from the Constitution and statutes which gave it existence. To the Commissioners' Court, under the Constitution and statutes is committed "county business". There is an essential difference between the rights of such public corporations respecting the disposition of property and natural persons, the latter having an inherent right in disposing of their property, while public corporations can only acquire and dispose of property by virtue of some positive law, or necessary implication arising therefrom.

There will not be found any express statutory provision conferring upon the Commissioners' Court authority to sell personal property belonging to the County, but we think that by necessary implication from the posi-

tive law, which, under the Constitution and statutes, is conferred upon the Commissioners' Court to transact the business of the County, to protect its interests, and promote the welfare of the County as a whole, that sound public policy justifies the action of the Commissioners' Court in selling worn out road machinery when deterioration has reached the point where it would no longer be the exercise of sound economic principles to continue its use.

We are, therefore, of the opinion that it is within the implied power of the Commissioners' Court to sell personal property, such as worn out road machinery and like items, when within the sound discretion of the Court it no longer serves a sound economic use to the County.

Since the statute does not specifically authorize a sale of such property, but rests upon the implied powers within which the Court is authorized to act, it necessarily follows that no method is provided as to the manner of disposing of such property. We think this rests within the reasonable discretion of the Commissioners' Court acting as a whole, to pursue the method that will produce the highest price, whether by private or public sale. We think either method would be legal if pursued in good faith and with a view of protecting the interests of the County and promoting its general welfare.

Your second question has heretofore been answered by this department by opinion No. 0-3480, a copy of which is herewith enclosed for your information.

SUMMARY

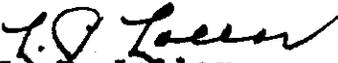
The Commissioners' Court has implied authority to sell, either at private or public sale, worn out and antiquated road machinery, when in the sound discretion of the Court such property no longer serves a useful purpose, consistent

with the economic interests of the
County.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By


L. P. Lollar
Assistant

APPROVED


ATTORNEY GENERAL

LPL:jrb