



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

June 12, 1947

**Hon. M. W. Jones
County Auditor
Gaines County
Seminole, Texas**

Opinion No. V-246

**Re: Authority of the
Commissioners' Court
to order the issuance
of scrip warrants for
the payment of claims
against the Road and
Bridge Fund under the
facts presented.**

Dear Sir:

Your request for an opinion from this Department on the above subject matter is as follows:

"Gaines County's Road and Bridge Revenue is in turn transferred to the funds of the four precincts. When the funds of one precinct are exhausted, does the Commissioners Court have the authority to order the issuance of scrip warrants in payment of claims against that precinct for services and materials as long as there is a balance to the credit of all of the Class 2 Funds as a whole?"

In answer to our request for additional information we have received your letter of May 9th which is in part as follows:

"1. The 1947 budget appropriated funds amounting to \$25,773.70 for the operations of Precinct #4, the precinct in question. Of this amount, more than \$16,000.00 has been expended or will be payable by May 31, 1947.

"2. The scrip warrants, if issued, can be redeemed in November, 1947, from money received in the October tax collections. A large portion of our valuations being from oil, we have consistently collected approximately 90% of the taxes

assessed in October. Of course, this will use up a large portion of the money needed for the 1948 operations of the precinct."

In the case of *Austin Bros. v. Montague County*, 291 S.W. 628, reversed on other points, 10 S.W. (2d) 718, it was held that where a county had issued warrants for the payment of road machinery and said warrants were not intended to be paid out of current revenues, the warrants were void. We quote from said opinion the following:

"Section 7, Art. 11, of our Constitution, declares, so far as pertinent, that:

"No debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least 2% as a sinking fund'.

"It seems clear, both by the terms of the warrants and from the testimony of the commissioners, that the sums specified in the warrants were not to be paid out of the current funds of the year of their issuance. This being true, we think there can be no question under the authorities but that the obligation constituted 'a debt' within the meaning of the constitutional provision we have quoted.

"In the case of *McNeill v. City of Waco*, 89 Tex. 83, 33 S.W. 322, it was said on this subject by our Supreme Court:

"An obligation binding the city to pay for a matter relating to its ordinary expenses, such payment being, in contemplation of the parties, not intended to be made out of the current funds of the year in which the expenditure is made, or any funds on hand lawfully applicable thereto,

would be a debt, within the meaning of the Constitution.'

"In the case of *City of Terrell v. Dessaint*, 71 Tex. 770, 9 S.W. 593, our Supreme Court also said on the subject:

"We freely concede that debts for the ordinary running expenses of a city, payable within a year out of the incoming revenues of the year, and with other indebtedness not clearly in excess of the yearly income for general purposes, can be created by a city. But we think that a debt for current expenses in order to be valid, without a compliance with the constitutional and statutory requirements to which we have referred, must run concurrently with the current resources for such purposes, and that such a debt cannot be created without such compliance, which matures at such a time as would make it a charge upon the future resources of the city."

Under Article 689a-9-11, V.C.S., the budget which is prepared in July and adopted in August seems to be tied to the tax levy made in August for taxes which are to become due and payable on October 1st. This is made manifest by that part of Article 689a-11 reading as follows:

"When the budget has been finally approved by the commissioners' court, the budget, as approved by the Court shall be filed with the Clerk of the County Court and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the court."
(Emphasis added)

The budget referred to here is the budget for the following calendar year. The taxes levied in August on the basis of the August budget are taxes which in contemplation of Article 689a are to be applied to the expenditures for the following calendar year. This practice of levying taxes in August for use in the

following calendar year worked well in practice until the Legislature passed Article 7255b, V.C.S., allowing a discount on ad valorem taxes paid in advance. Prior to this law, most of the taxes levied in August were paid in January of the following year, immediately before they became delinquent on February 1st., Article 7336, V.C.S. After enactment of Article 7255b, the bulk of the taxes levied in August are paid in October, November and December following, in order to take advantage of the discount. This, however, does not change the fact that taxes collected in October, November and December 1947 under the 1947 assessment are to be used for 1948 operations.

In view of the foregoing authorities, scrip warrants cannot now be issued that will have to be redeemed out of taxes collected under 1947 assessments for such taxes are revenues for 1948 operations and not current revenues. Under the facts submitted, there has already been expended all but \$9,773.70 of the amount appropriated under the 1947 budget for Precinct #4, the precinct in question. It is, therefore, our opinion that scrip warrants up to \$9,773.70 may be issued if they are within the reasonably anticipated current revenues for 1947. It is our further opinion that no scrip warrants may be issued that are intended to be paid out of revenues for 1948 or any future year.

SUMMARY

Scrip warrants on county road and bridge fund may be issued by a county in an amount equal to the difference between the sum of money already expended and the amount appropriated in 1946 for the 1947 budget, provided such warrants are within the reasonably anticipated current revenues for the calendar year 1947.

Taxes collected in October, November and December, 1947, under the 1947 assessment, in a county operating under Art. 689a, V.C.S., are to be used for 1948

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operations and are not current revenues
for 1947.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

YD/lh:wb

By

Fagan Dickson
First Assistant

By

John Reeves
John Reeves
Assistant

APPROVED:

Price Daniel
ATTORNEY GENERAL