



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

November 24, 1947

Hon. C. S. Harris
Acting County Attorney
Borden County
Gail, Texas

Opinion No. V-440

Re: Authority of a commissioners' court to reject a petition to create a road district and a bond election therefor.

Dear Sir:

Your letter of October 23, 1947, requested the opinion of this Department on the following question:

"If 50 or more qualified tax paying voters have signed a petition requesting the Commissioners' Court to set aside a Commissioner's Precinct as a Special Road District at the same time requesting the Court to order an election for the purpose of voting on a bond issue for the purpose of building a hard surface road, and said petition has been presented to said Court and a hearing has been held in which six people protested against the petition, can the Court reject setting aside the road district and also refuse to order the election if they feel that it is not the thing to do. Or is it possible for the voters to hold the election if the Court is not willing to order it?"

This question raises three distinct issues:

1. The power of the commissioners' court to set aside a special road district.
2. The power of that court to call a bond election.
3. The power of the citizens to call and conduct an election on their own motion and initiative.

Art. III, Sec. 52, Constitution of Texas, provides that the Legislature may authorize the issuance of road bonds by any of the following entities:

1. County
2. Political subdivision of a county (Art. 752a, V.C.S. defines a subdivision of a county as any commissioners' precinct or any justice precinct)
3. Any number of adjoining counties
4. Any political subdivision of the State
5. Any defined district

Art. 752a, V C.S. the enabling act for Sec. 52, Art. III, Constitution of Texas, provides as follows:

"Any county, or any political subdivision of a county, or any road district that has been or may hereafter be created by any general or special law, is hereby authorized to issue bonds for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, in any amount not to exceed one-fourth of the assessed valuation of the real property of such county or political subdivision or road district, and to levy and collect ad valorem taxes to pay the interest on such bonds and provide a sinking fund for the redemption thereof. Such bonds shall be issued in the manner hereinafter provided, and as contemplated and authorized by Section 52, of Article 3, of the Constitution of this State. The term 'political subdivision,' as used in this Act, shall be construed to mean any commissioners' precinct or any justice precinct of a county, now or hereafter to be created and established."

With reference to the formation of road districts, Art. 752c, V.C.S. provides, in part, that:

"The County Commissioners' Courts of the several counties of this State may hereafter establish one or more road districts in their respective counties, and may or may not include

within the boundaries and limits of such districts, villages, towns and municipal corporations, or any portion thereof, and may or may not include previously created road districts and political subdivisions or precincts that have voted and issued road bonds pursuant to Section 52 of Article 3 of the Constitution, by entering an order declaring such road district established and defining the boundaries thereof.

In the case of King v. Falls County, 42 S. W. (2d) 481, the Waco Court of Civil Appeals, speaking through Justice Alexander, now Chief Justice of the Supreme Court of Texas, referred to Art. 752c as follows:

"The statute, Article 752c, . . . authorized the Commissioners' Court to create a road district of its own motion, and does not require that any previous notice be given to the taxpayers, nor that evidence be heard as to the advisability of creating the same. The statute does not contemplate that the taxpayer shall be heard at the time the district is created. His right to be heard accrues later when the petition is presented to the Court calling for the bond election."

A commissioners' court is vested with power to create road districts in a county under Art. 752c, V.C.S., without respect whatsoever to other existing political subdivisions of the county. (Attorney General's Opinion No. 0-3493)

Formation of a road district by a commissioners' court lies within the discretion of the court and the court is under no duty to conduct a hearing on a petition to form such district.

The provision in Article 752d, quoted below, for a petition of 50 taxpayers, is applicable to the question of the issuance of the bonds and not to the creation of the district. While the petition of taxpayers for the creation of a district would be persuasive with the commissioners, the filing of such petition has no binding effect on the action of the court.

With reference to the issuance of bonds, Art. 752d, V.C.S., reads, in part as follows:

"Where any political subdivision, or any road district, desires to issue bonds, there shall be presented to the Commissioners' Court of the county in which such subdivision or district is situated, a petition signed by fifty or a majority of the resident property taxpaying voters of said subdivision or road district praying such court to order an election to determine whether or not the bonds of such subdivision or district shall be issued to an amount stated for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, and whether or not taxes shall be levied on all taxable property within said subdivision or district in payment thereof. Upon presentation of such petition, it shall be the duty of the court to which it is presented to fix a time and place at which such petition shall be heard, which date shall be not less than fifteen nor more than thirty days from the date of the order. The clerk of said court shall forthwith issue a notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing and of their right to appear at such hearing and contend for or protest the ordering of such bond election.

...

Art. 752e, V.C.S., provides, in part, that:

"At the time and place set for the hearing of the petition, or such subsequent date as may then be fixed, the court shall proceed to hear such petition and all matters in respect of the proposed bond election. Any person interested may appear before the court in person or by attorney and contend for or protest the calling of such proposed bond election. Such a hearing may be adjourned from day to day and from time to time, as the court may deem necessary. If upon the hearing of such petition, it be found that the same is signed by fifty or a majority of the resident property tax paying voters of such subdivision or road district, and that due notice has been given, and that the proposed improvements

would be for the benefit of all taxable property situated in such sub-division or road district, then such court may make and cause to be entered of record upon its minutes an order directing that an election be held within and for such subdivision or road district at a date to be fixed in the order, for the purpose of determining the questions mentioned in such petitions; provided, however, that such court may change the amount of the bonds proposed to be issued, if, upon the hearing such change be found necessary or desirable. . . ."

In King v. Falls County, supra, Art. 752e is referred to as follows:

"This statute (Art. 752e) requires the commissioners' court, before ordering such an election, to make a finding that it would be for the benefit of all taxable property in the district. . . . We therefore have before us a case where the law requires the Commissioners' Court, before ordering a bond election, to judicially determine that the issuance of the bonds would be for the benefit of all taxable property in the district, and yet, under the allegations in this case, the court has not judicially determined such issue, but has arbitrarily and wrongfully entered such an order contrary to the facts. . . ."

"Our Constitution, Article 5, Section 8, gives the district court supervisory control over the commissioners' court. . . . Where a matter has been committed to the discretion of the commissioners' court and acted on by it, its judgment becomes the judgment of a court of competent jurisdiction, and a district court is not authorized to review the discretion of the commissioners' court, nor to set aside such judgment, unless it appears that there has been a clear abuse of the discretion of the court, or, unless there appears to be collusion, fraud, or bad faith. . . ."

Hence if the Commissioners' Court finds that the improvements would not be for the benefit of all taxable property, its judgment will not be disturbed on appeal unless it is made to appear that there was an abuse of discretion, fraud, collusion, or bad faith. If in their honest judgment and discretion the commissioners' court thinks the

subdivision proposing the bond election would not benefit by it, then they may refuse to order an election; and any election conducted on the initiative of the voters themselves would be of no force and effect as the Legislature has created the procedure for road bond elections and it must be followed in all respects. Where there has been an authority granted to a political subdivision to create indebtedness the statutes are to be followed strictly.

Therefore, we are of the opinion that the Commissioners' Court of Borden County is under no duty to set aside or create a commissioners' precinct as a special road district upon presentation of a petition signed by fifty or more qualified taxpaying voters. The Commissioners' Court must make an affirmative finding that the proposed improvements within a road district or political subdivision would be for the benefit of all taxable property situated therein prior to ordering a road bond election as required by Article 752e, Vernon's Civil Statutes. Where the commissioners' court fails or refuses to order a road bond election any election conducted by the voters themselves on a bond issue would be invalid as a strict compliance with statutory procedure for creating bonded indebtedness is required.

SUMMARY

Creation of a road district for road bond purposes by a commissioners' court lies within the discretion of the court. A finding by a commissioners' court that the proposed improvements would be for the benefit of all taxable property situated within the road district or political subdivision petitioning for a road bond election is necessary prior to ordering the election. Where a commissioners' court fails or refuses to order a road bond election within a district or subdivision, an election conducted by the voters would be invalid.

Yours very truly

APPROVED:

For R. Greenhill

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JTB/lh

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