



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

September 14, 1948

PRICE DANIEL  
ATTORNEY GENERAL

Hon. Sam Lee  
County Attorney  
Brazoria County  
Angleton, Texas

Opinion No. V-682

Re: Authority of Commissioners' Court to furnish automobiles, and an allowance for their maintenance, for the use of individual Commissioners in handling county business.

Dear Sir:

Your letter requesting an opinion reads:

"The County Auditor of Brazoria County propounded to me the following questions:

"(1) Is it legal for the County of Brazoria to furnish the individual members of the Commissioners' Court of Brazoria County, Texas an automobile for their use in traveling about to take care of county business?

"(2) Is it lawful for the County of Brazoria to furnish the individual members of the Commissioners' Court the sum of \$25 per month for the up keep and maintenance of cars furnished by the county to the individual members of the Commissioners' Court?

"It is my opinion that it is not legal for the County of Brazoria to furnish individual members of the Commissioners' Court automobiles for their use in transacting county business and neither is it legal for the County of Brazoria to pay \$25 per month for the up keep and maintenance of said cars used by said commissioners.

"This opinion has been excepted to and also involves the validity of the

statute; therefore, I am requesting your opinion of the two above stated questions."

H. B. 868, Acts 1941, 47th Legislature, p. 394, (Article 2350m, V. C. S., note) provides:

"Section 1. In any county in this State having a population of not less than twenty-seven thousand and fifty-nine (27,059) and not more than twenty-seven thousand, one hundred and fifty (27,150), according to the last preceding Federal Census, the Commissioners Court is hereby authorized to allow each County Commissioner the sum of Twenty-five Dollars (\$25) per month for traveling expenses while on official business.

"Sec. 2. The Commissioners Court in said counties is hereby authorized to allow each County Commissioner the use of a separate automobile to be used by the Commissioner in the discharge of official business, said automobile to be purchased by the county in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county."

Brazoria County with a population of 27,069 inhabitants according to the 1940 Federal Census is the only county in the State coming within the population bracket set out in the above Act. Such Act is applicable only to Brazoria County.

Article III, Section 56 of our State Constitution, provides, in part, as follows:

"The Legislature shall not, except as otherwise provided in this Constitution pass any local or special law, authorizing:

". . .

"Regulating the affairs of counties, cities, towns, wards or school districts;

". . .

The court in the case of Jameson v. Smith, 161 S.W.(2d) 520, writ refused, held unconstitutional an Act

which provides:

" . . . the Commissioners Court is hereby authorized to allow each Commissioner not more than the sum of Thirty-five Dollars (\$35) per month to be paid out of the Road and Bridge Fund of each respective Commissioner's Precinct, for traveling expenses and depreciation on the automobile while used on official business only and/or in overseeing the construction and maintenance of the public roads of said counties. Each such Commissioner shall pay all expenses in the operation of such automobile and keep same in repair at his own expense, free of any other charge whatsoever to the county."

We quote the following from Jameson v. Smith, supra:

"At the time the law went into effect in 1939, Coleman County was the only county in Texas within its provisions. At the present time under the 1940 Federal Census it is not within the provisions of the law and only Lee County is . . .

"If it were the desire, purpose and intention of the Legislature to pass a special road law for Coleman County, it could have easily manifested it by passing it as such . . .

"The Acts provided for reimbursement or compensation or the equivalent thereof for these new and added duties. We understand the decisions to rest upon that ground, and conclude, therefore, if the added compensation provided for merely supplements the compensation as provided by general law without by express terms of the Act imposing any added and new duties, the law merely undertakes to regulate county business contrary to the Constitution, Art. 3, Sec. 56, and is not a local road law for the maintenance of public roads and highways.

"The conclusions reached here seem

to be in harmony with what Chief Justice Phillips said in *Altgelt v. Gutzeit*, supra, and quoted by Judge Alexander in *Crow v. Tinner* (47 S.W.2d 393): 'No doubt the Legislature, in the passage of local road laws, may, within proper bounds, provide compensation for extra services to be performed by those officials \* \* \* where uncontrolled by general laws and required by such local laws and directly connected with the maintenance of the public roads.' *Kitchens v. Roberts*, supra, writ refused, is to the same effect.

"This law is not limited to the maintenance of public roads, nor does it impose added and new duties not imposed by general law for which it undertook to provide additional compensation. For the reasons stated here we regard it as unconstitutional, and so hold."

In view of the foregoing it is our opinion that H. B. 868, Acts 1941, 47th Legislature, p. 394 (Article 2350m, V. C. S., note) is unconstitutional and void. For additional authorities on this point see authorities cited in Attorney General's Opinion No. V-225, a copy of which is enclosed.

According to your inquiry Brazoria County is operating under the County Optional Road Law of 1947. However, the Optional Road Law does not contain any provision relative to the purchase of automobiles for use by the county commissioners. Therefore, we must look to the general law to determine whether automobiles may be furnished the commissioners. In Attorney General's Opinion No. 0-752, it was held:

"You are respectfully advised that it is the opinion of this department that the Commissioners' Court in counties operating under the general road law of this state are not empowered or authorized to buy automobiles, pick-ups or trucks for the county to be used by the commissioners in the performance of their duties as county commissioners."

It is our opinion in view of the foregoing that

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no automobile may be furnished to the County Commissioners of Brazoria County.

Since no automobile may be furnished the County Commissioners of Brazoria County, it follows in answer to your second question that the Commissioners' Court could not pay its commissioners \$25.00 per month for the upkeep and maintenance of such cars.

SUMMARY

An act providing that any county having a population of between 27,059 and 27,150 may purchase automobiles for County Commissioners is unconstitutional as a local or special law. Art. III, Sec. 56, Const. of Texas; Jameson v. Smith, 161 S.W. (2d) 520, writ refused.

The Commissioners' Court of Brazoria County operating under the County Optional Road Law of 1947 is not empowered or authorized to purchase automobiles for the county to be used by the commissioners in the performance of their official duties.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

JR:mv

By *John Reeves*  
John Reeves  
Assistant

APPROVED:

*J. R. Greenhill*  
ACTING ATTORNEY GENERAL