



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

October 19, 1948

Hon. Jean Day
County Attorney
Henderson County
Athens, Texas

Opinion No. V-701

Re: Legality of paying for
the construction of
sidewalks, driveways,
and landscaping for a
County Hospital out of
the Permanent Improve-
ment Fund.

Dear Sir:

You have requested this office to determine whether the Commissioners' Court of Henderson County has the authority to expend a portion of the Permanent Improvement Fund for the construction of sidewalks, necessary entrances and exits, driveways, and landscaping on the grounds of a county hospital. We assume that this construction referred to in your request constitutes no part of the original construction of the hospital for which a bond issue was voted.

Article VIII, Section 9 of our State Constitution authorizes a tax to be levied by the county for the erection of public buildings, streets, sewers, water works and other permanent improvements. It is well settled in this State that taxes levied for any specific purpose or class of purposes designated in Article VIII, Section 9, must be applied thereunto in good faith, and in no event expended for some other purpose. *Carroll v. Williams*, 202 S.W. 504. Your question, therefore, is whether sidewalks, driveways and landscaping of a county hospital constitute "other permanent improvements" within the meaning of Article VIII, Section 9 of our State Constitution.

It is held in Attorney General's Opinion No. V-518 that where the establishment of a county hospital was from current funds, the cost of the purchase would come from the Permanent Improvement Fund and the costs of the operation and maintenance from the General Fund.

In Attorney General's Opinion No. V-567, it

was held:

"Applying the principles announced in this case to the situation about which you inquire, tax money raised for hospital maintenance purposes comes from the general fund levy, whereas tax money for the establishment and construction of a county hospital comes from the permanent improvement levy. Therefore the Commissioners' Court is without authority to appropriate hospital maintenance funds for hospital construction purposes, for such appropriation would constitute an unlawful transfer and diversion of constitutional funds."

It was held in the case of *Holman v. Broadway Improvement Co.* (Com. App.) 300 S.W. 15, that the construction of a sea wall constitutes a permanent improvement. Likewise the painting of a building and erection of partitions in some of the rooms have been held to be a permanent improvement. See *Words and Phrases*, Vol. 32, page 114.

In Attorney General's Opinion No. V-282, this office had a similar question under consideration. It was held in this opinion that the construction of parking areas on the court house yard could be paid for out of the Permanent Improvement Fund of the county if the parking areas did not constitute a part of the street but actually comprise a part of the court house yard. We are herewith enclosing Opinion No. V-282.

In view of the foregoing, it is our opinion that the construction of sidewalks, necessary entrances and exits, driveways, and landscaping of a county hospital, being permanent improvements, may be paid for out of the Permanent Improvement Fund of the county.

SUMMARY

The construction of sidewalks, necessary entrances and exits, driveways and landscaping of a county hospital may be paid for out

Hon. Jean Day, page 3 (V-701)

of the Permanent Improvement Fund of the county. Art. VIII, Section 9, Texas Constitution.

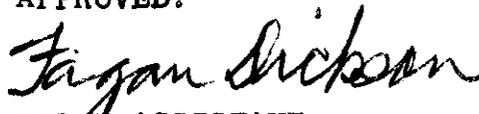
Yours very truly,

ATTORNEY GENERAL OF TEXAS

By 
John Reeves
Assistant

JR:mw

APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL