



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL**  
ATTORNEY GENERAL

June 4, 1951

Hon. John H. Miller  
District Attorney  
36th Judicial District  
Sinton, Texas

Opinion No. V-1181

Re: Validity of the submitted contract between McMullen County and McMullen County Water Control and Improvement District No. 1 for water for the courthouse and jail.

Dear Mr. Miller:

Your request for an opinion presents the following factual situation:

In 1949 the Commissioners' Court of McMullen County authorized the construction of a water well on the courthouse grounds at a cost of approximately \$25,000.00. The well was paid for with warrants and refunded with bonds bearing 4% interest, being a county-wide obligation. In May, 1950, the McMullen County Water Control and Improvement District was formed embracing approximately 160 acres of land which included the unincorporated town of Tilden, the county seat. In August, 1950, the Commissioners' Court of McMullen County entered into a contract with the Water Control and Improvement District relinquishing control of the water well for a period of forty years. By the terms of this contract, the Water Control and Improvement District was to pay the county a nominal cash consideration annually as well as furnishing the county palatable water for the courthouse and jail. The supply of water exceeds that needed for the courthouse and jail and a number of residents of Tilden have connected pipes to the well and, with the permission of the commissioners' court, have been using the water.

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Question: Did the Commissioners' Court of McMullen County have the authority to enter into this type of contract with the Water Control and Improvement District, and if so, is such contract a valid and binding obligation of McMullen County?

This office, following the decisions of the Texas courts, has repeatedly held that the commissioners' court is a court of limited jurisdiction and has only such powers as are conferred upon it, either by express terms or by necessary implication by the statutes and Constitution of this State. Childress County v. State, 127 Tex. 343, 92 S.W. 2d 1011 (1936); Von Rosenberg v. Lovett, 173 S.W. 508 (Tex.Civ. App. 1915, error ref.); Roper v. Hall, 280 S.W. 289 (Tex. Civ. App. 1926); 11 Tex. Jur. 632, Counties, Sec. 95; 20 C.J. S. 1006, Counties, Sec. 174.

Section 20 of Article 2351, V.C.S., provides:

"The Commissioners Court of each county of this State, in addition to the powers already conferred on it by law, is authorized and empowered in all cases where such county has acquired a water supply from subterranean waters for county purposes, to sell, contract to sell and deliver any or all of such water which is not needed for county purposes to any public or municipal corporation, or political subdivision of this State, including any water control and improvement district, or fresh water supply district now created and existing, or which may hereafter be created under the laws of this State; any such water sold or contracted to be sold and delivered to any such public or municipal corporation or political subdivision of this State, may be used or re-sold for any lawful purpose; and said Commissioners Court shall have the right to fix and determine the rate or rates at which such water shall be sold to any such public or municipal corporation or political subdivision of this State, and to enter into contracts to sell and supply such water at such determined rate or rates for any term of years not exceeding forty (40); and all monies received by the county from the sale of such water shall be placed to the credit

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of the General Fund of the county and may be expended for general county purposes as now or hereafter permitted by law."

In El Paso County v. Elam, 106 S.W.2d 393, 395 (Tex.Civ.App. 1937), the court said:

". . . the commissioners' court is a creature of the Constitution, and its powers are limited by the Constitution and the laws passed by the Legislature, and must have authority of law for the contract, and when the authority is given, a reasonable construction of it will be given to effect its purpose. The matter of constructing drainage ditches in the county is, unquestionably, county business, and the commissioners' court is the only active governing body of the county, with a jurisdiction conferred upon it by law to do that work, and should be given a broad and liberal construction so as not to defeat the purpose of the law. The commissioners' court has implied authority to do what may be necessary in the exercise of the duties conferred upon them."

In Broussard v. Wilson, 183 S.W. 814, 819 (Tex. Civ.App. 1916), the court said:

"Whether or not said contract was an improvident contract, disadvantageous to the county and advantageous to Hanson Sons, Incorporated, in the absence of proof of actual fraud, is not a question for this court to determine. The Legislature has seen proper to confer upon the commissioners' court the power and authority to make contracts for the repairing and construction of roads within its county, and, so long as said courts make contracts within the restrictions of the Constitution and under the authority of law, it is not for the courts to substitute their judgment for that of the commissioners' court as to the wisdom of such contracts."

Specific authorization is contained in Article 2351 for a commissioners' court to sell, contract to sell

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and deliver any or all of such water which is not needed for county purposes to a water control and improvement district. It is our opinion that your factual situation comes within the purview of Section 20 of Article 2351.

You are therefore advised that in our opinion the Commissioners Court of McMullen County was authorized to enter into the contract in question with the McMullen County Water Control and Improvement District No. 1, and the contract is a valid and binding obligation of McMullen County.

SUMMARY

The Commissioners' Court of McMullen County is authorized to contract with the McMullen County Water Control and Improvement District No. 1 to sell and supply water from a water well on the courthouse grounds to the district in return for a sufficient quantity of palatable water to satisfy county purposes and a nominal cash consideration, the remainder of such water to be used by the district for any lawful purpose. Art. 2351, Sec. 20, V.C.S.

APPROVED:

J. C. Davis, Jr.  
County Affairs Division

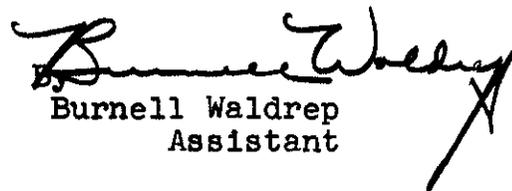
Jesse P. Luton, Jr.  
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BW:mw:t

Yours very truly,

PRICE DANIEL  
Attorney General

  
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