



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD  
ATTORNEY GENERAL

August 31, 1953

Hon. E. H. Thornton, Jr. Opinion No. S-94  
Chairman

State Highway Commission Re: Service of members of the  
Austin 14, Texas State Highway Commission  
as ex-officio members of  
the Texas Turnpike Authority  
as provided in House Bill 4,  
Acts 53rd Legislature.

Dear Mr. Thornton:

You have requested an opinion in regard to certain portions of Chapter 410, Acts of the 53rd Legislature, codified in Vernon's as Article 6674v, V.C.S., which creates The Texas Turnpike Authority. Your specific questions are as follows:

"1. Can we serve ex-officio as a Member of the Board of Directors of such Authority without violating either Section 33 or Section 40 of Article 16 of the Constitution of Texas?

"2. Since each of us has already taken an oath of office at the time we qualified for our respective positions on the Highway Commission, are we required to take an additional oath as ex-officio members of the Board of Directors of the Toll Road Authority? If we are so required, would we then be holding two offices in violation of either of the Sections of Article 16 of the Constitution of Texas aforementioned?

"3. Are we, as ex-officio members of the Board of Directors, required to file a surety bond in the penal sum of \$25,000.00? If we are so required, would we then be holding two offices in violation of either of the Sections of Article 16 of the Constitution of Texas aforementioned?

"4. If we are required to execute a surety bond in the penal sum of \$25,000.00, will we, or any of the appointed Directors of the Toll Road Authority, be required to execute such bond prior to the time any Turnpike Revenue Bonds, under the provisions of House Bill No. 4, are actually issued?

"5. If we are required to execute a surety bond in the penal sum of \$25,000.00, should we do so in our capacity as ex-officio Members of the Board of Directors of the Toll Road Authority or in our capacity as Members of the Highway Commission?"

Section 3 of Article 6674v provides that each member of the Texas State Highway Commission shall serve ex-officio as a member of the Board of Directors of the Texas Turnpike Authority. Such section provides in part:

"The Legislature imposes on any Director who may be a member of the State Highway Commission the extra duties required hereunder."

The ex-officio duties of the members of the Texas Highway Commission are additional duties required to be performed by such officers without additional compensation. Therefore, acts of the ex-officio members of the Board of Directors of the Texas Turnpike Authority are by virtue of the duties imposed on Highway Commissioners. The act does not create a separate and distinct office insofar as it applies to such members, and Sections 33 and 40 of Article XVI of the Constitution of Texas have no application. Jones v. Alexander, 122 Tex. 328, 59 S.W.2d 1080 (1933); Eucaline Medicine Co. v. Standard Investment Co., 25 S.W.2d 259 (Tex.Civ.App. error ref., 1930); Irwin v. State, 147 Tex.Crim. 6, 177 S.W.2d 970 (1944). Therefore, the performance of such ex-officio duties would not violate the provisions of Sections 33 and 40 of Article XVI of the Constitution of Texas.

The Constitutional oath required of the ex-officio Directors of the Texas Turnpike Authority is the same oath that such Highway Commissioners have already

taken. Therefore, it would be a meaningless thing to require them to again take the same oath upon assuming their additional duties. Furthermore, as stated above the members of the Texas Highway Commission hold only one office.

The statute is plain that each Director shall execute a surety bond in the sum of \$25,000 "before the issuance of any turnpike bonds." Since this bond is conditioned upon the performance of the additional duties and is separate and distinct from the bond executed by the Highway Commissioners under Article 6664, V.C.S., a Highway Commissioner would be required to execute such bond before the issuance of turnpike bonds. Such bond should be executed as Director of the Texas Turnpike Authority in compliance with Section 3 of Article 6674v.

SUMMARY

Members of the Texas Highway Commission are ex-officio Directors of the Texas Turnpike Authority. The performance of such duties by them does not violate either Sections 33 or 40 of the Constitution of Texas. They are not required to take an additional oath but are required to execute a surety bond in the sum of \$25,000 before the issuance of any turnpike bonds.

Yours very truly,

APPROVED:

J. C. Davis, Jr.  
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