



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 18, 1960

Honorable E. E. Coons
County Attorney
Sherman County
Stratford, Texas

Opinion No. WW-961

Re: Whether the Commissioners' Court may require gas pipeline companies to move or lower their pipelines along or across public roads which are to be paved without paying compensation therefor.

Dear Mr. Coons:

You have requested the opinion of this office on the following question:

May the Commissioners' Court of Sherman County require gas pipeline companies to move or lower their pipelines along or across public roads which are to be paved without paying compensation therefor?

In the case of State v. City of Austin, Tex., 331 S.W. 2d 737 (1960), the Supreme Court of Texas was confronted with the question of the validity of an enactment of the Legislature which provided that the relocation of utility facilities necessitated by the improvement of highways established as a part of the National System of Interstate and Defense Highways be made by the utility at the cost and expense of the State. In upholding this statute the Court, in the course of its opinion, also stated the law applicable to the situation raised by your question.

At page 741 of the opinion we find it stated:

"In the absence of assumption by the state of part of the expense, it is clear that respondents could be required to remove at their own expense any installations owned by them and located in public rights of way whenever such relocation is made necessary by highway improvements. See City of San Antonio v. Bexar Metropolitan

Water District, Tex. Civ. App., 309 S.W. 2d 491 (wr. ref.); City of San Antonio v. San Antonio St. R. Co., 15 Tex. Civ. App. 1, 39 S.W. 136 (wr. ref.); State of Tennessee v. United States, 6 Cir., 256 F. 2d 244. As pointed out in the Bexar Metropolitan Water District case, the main purposes of roads and streets are for travel and transportation. While public utilities may use the same for laying their lines, such use is subject to reasonable regulation by either the state, the county or the city, as the case may be. The utility may always be required, in the valid exercise of the police power by proper governmental authority, to remove or adjust its installations to meet the needs of the public for travel and transportation."

Quoting further from the same source and page:

". . . Many city ordinances as well as several of our statutes authorizing utility companies and municipal corporations to erect their lines along and upon public roads and streets stipulate that the owner of the facility may be required to relocate the same at its own expense so as to permit road and street improvements. See Articles 1433, 1433a, 1436a, and 1436b, Vernon's Ann. Tex. Civ. Stat. These statutes and ordinances express the public policy of the state as it existed at the time of their adoption. . . ."

Article 1436b of Vernon's Annotated Texas Civil Statutes, as referred to by the Court, reads in part as follows:

"Section 1. Any person, firm or corporation or incorporated city or town engaged in the business of transporting or distributing gas for public consumption shall have the power to lay and maintain pipes, mains, conductors and other facilities used for conducting gas through, under,

along, across and over all public highways, public roads, public streets and alleys, and public waters within this State; provided that within the corporate limits of an incorporated city or incorporated town such right shall be dependent upon the consent and subject to the direction of its governing body. Any such person, firm or corporation or incorporated city or town shall notify the State Highway Commission or the Commissioners Court having jurisdiction, as the case may be, when it proposes to lay any such pipes, mains, conductors and other fixtures for conducting gas within the right-of-way of any state highway or county road outside the limits of an incorporated city or incorporated town, whereupon the Highway Commission or the Commissioners Court, if it so desires, may designate the place upon the right-of-way where the same shall be laid. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such person, firm or corporation or incorporated city or town at its own expense to relocate its pipes, mains, conductors or other fixtures for conducting gas on a state highway or county road outside the limits of an incorporated city or incorporated town so as to permit the widening or changing of traffic lanes, by giving thirty (30) days written notice to such person, firm or corporation or incorporated city or town and specifying the facility or facilities to be moved and indicating the place on the new right-of-way where such facility or facilities may be placed. Such person, firm or corporation or incorporated city or town shall replace the grade and surface of such road or highway at its own expense."
(Emphasis added)

It is our opinion that the language quoted from State v. City of Austin, supra, and the plain unequivocal language of Article 1436b requires that your question be answered in the affirmative.

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You are therefore advised that the Commissioners' Court of Sherman County may require the gas pipeline in question to be moved or lowered by the pipeline company at the expense of such companies by giving notice in compliance with Article 1436b.

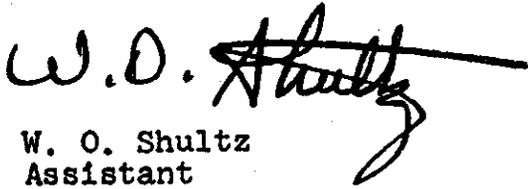
S U M M A R Y

The Commissioners' Court of Sherman County, Texas, is authorized to require gas pipeline companies, whose lines run along or across public roads which are to be paved, to move or lower such pipelines at their own expense and without reimbursement from the State.

Yours very truly,

WILL WILSON
Attorney General of Texas

By


W. O. Shultz
Assistant

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

W. Ray Scruggs
Harris Toler
Linward Shivers
B. H. Timmins, Jr.

REVIEWED FOR THE ATTORNEY GENERAL

BY: Leonard Passmore