



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

October 26, 1961

Hon. Charles J. Lieck, Jr.  
Criminal District Attorney  
San Antonio, Texas

Opinion No. WW-1178

Re: Whether expenses incurred in the defense of a suit for damages arising out of the purchase of land for a State highway, the original purchase of which was paid out of Bond Funds may be paid out of the County "General Fund" and related questions.

Dear Mr. Lieck:

In reference to your inquiry of September 14, 1961, the relevant facts set out are these: a bond election was called by the county to issue bonds in Bexar County Road District No. 1; a pre-election order was passed by the Commissioners Court allocating the proceeds from the sale of bonds in the event they were voted; certain appraisals were necessary in conjunction with a lawsuit in which the county was a defendant, growing out of a purchase by the county of a right-of-way with the proceeds; the Commissioners Court passed an order authorizing the county auditor to draw voucher warrants for the appraisal fees, such fees to be charged equally between the General Road and Bridge Fund--District No. 1 and the General Fund, a constitutional fund.

Your present three-part inquiry is as follows:

"1. Can the constitutional fund, commonly known as the 'General fund' be used for the purpose of paying expenses incurred in the defense of a suit for damages arising out of the purchase of the land for a State Highway, the original purchase price of which was paid out of Bond Funds, voted at least in part for such purposes?

"2. Is the order of the Commissioners Court which directs that 1/2 of such expenses be paid out of the 'General Fund' and 1/2 out of the 'Road and Bridge Fund' a valid order?

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"3. Can the remaining balances, or such portion thereof as is necessary, of the bond issue of December 10, 1954 in Road District No. 1 be used for the purpose of paying such expenses upon a proper finding and order of the Commissioners Court as is provided in the pre-election order?"

The answers to these questions necessitates an examination of Article 1630, V.C.S. and Section 9, Article VIII of the Texas Constitution, which are as follows:

"Article 1630. The Commissioners Court by an order to that effect may transfer the money in hand from one fund to another, as it may deem necessary and proper, except that the funds which belong to the class first shall never be diverted from the payment of the claims registered in Class first, unless there is an excess of such funds."

Section 9 of Article VIII of the Texas Constitution is in part as follows:

"Section 9. . . . provided further that at the time the Commissioners Court meets to levy the annual tax rate for each county it shall levy whatever tax rate may be needed for the four (4) constitutional purposes; namely, general fund, permanent improvement fund, road and bridge fund and jury fund . . . Once the Court has levied the annual tax rate, the same shall remain in force and effect during that taxable year, . . ."

We will attempt to answer your first two questions at the same time since they are interrelated. There are four constitutional county funds listed in Section 9 of Article VIII of the Constitution, to-wit: general fund, permanent improvement fund, road and bridge fund and the jury fund. It is too well settled for discussion that the Commissioners Court cannot levy a tax for one purpose and then spend the fund for another. (See Attorney General's Opinions O-413 (1939) and S-219 (1956).) Consequently, constitutional funds may not be transferred from one fund to another. Sanders v. Looney, 225 S.W. 280. (Civ.App. 1920). The leading authority on this matter is the landmark case of Carroll v. Williams, 109 Tex. 155, 202 S.W. 504 (1918), where the court specifically held that the money collected for the various constitutional funds could not be spent for any other purpose than the purpose for which such fund was set up by the Constitution. In so holding, the court stated:

". . . Taxes levied ostensibly for any specific purpose or class of purposes designated in Section 9 of Article 8, supra, must be applied thereunto, in good faith; . . ."

Article 1630, V.C.S., on the other hand, deals with statutory, not constitutional funds. The funds in question here are constitutional funds, being specifically the "General Fund" and the "Road and Bridge Fund." In Carroll v. Williams, supra, the Supreme Court clearly drew a distinction between constitutional and statutory funds holding that the Commissioners Court under Article 1630, V.C.S., is not authorized to direct a transfer from one constitutional fund of money received from taxes levied ostensibly for one purpose into another fund or expend for another and distinct purpose. (See Attorney General's Opinion O-2942 (1940).)

Thus, it is clear that the constitutional fund, commonly known as the "General Fund" cannot be used to pay appraisal expenses of a damage suit arising out of the purchase of land for state highways. So also, the Commissioners Court cannot direct that such expenses be paid in part out of the "General Fund" and such order is void to that extent.

Further, as to whether such expenses may be paid out of the constitutional fund known as the "Road and Bridge Fund," your attention is directed to Article 6674n, V.C.S., which reads in part as follows:

". . . This authority includes the power to exercise the right of eminent domain by any County Commissioners Court within the boundaries of a municipality with the prior consent of the governing body of such municipality. Provided that the county in which the State highway is located may pay for same out of the County Road and Bridge Fund, or any available county funds."

We are of the opinion that any unencumbered surplus in the county "Road and Bridge Fund" may be used to pay the appraisal costs in question under the authority of the above quoted statute. Such expenditure would escape the prohibitions of Carroll v. Williams, supra, as it would not be one unrelated and distinct from the purposes of the "Road and Bridge Fund." (See Attorney General's Opinions S-137 (1954) and V-694 (1948).) Thus, in our opinion, the portion of the order of the Commissioners Court prescribing payment out of the "Road and Bridge Fund" would be valid to that extent.

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The remaining part of your inquiry deals with whether these appraisal fees can be paid out of the remaining balances of the fund raised by the bond issue of December 10, 1954, upon a proper finding and order of the Commissioness Court. Reference is made to the Commissioners Court's pre-election allocation order which contained the following paragraph, which is Section 3(c):

"If this Court finds that it is not necessary or desirable to use any of the funds above allocated for the purposes for which such funds are allocated, such funds may be used for any of the other purposes hereinabove set forth; but none of such funds shall ever be used for any project which is not consistent with the overall long term planning of the State Highway Department for State and Federal Highways and Farm-to-Market Highways or Roads in Bexar County, Texas. . . ."

It is the opinion of this office that the paragraph above reserves limited discretion in the Commissioners Court of Bexar County in the expenditure of funds under the pre-election allocation order. The only qualification is that such discretionary expenditure be consistent with the overall long term planning. Murray v. Wilkinson, 32 S.W.2d 823 (Civ. App. 1930). The expenditure of funds for appraisal fees in connection with the defense of a suit growing out of the purchase by the county of certain rights-of-way with the bond election proceeds would seem to be consistent with the overall objectives. (See Attorney General's Opinion S-219, supra.) Thus, we are of the opinion that your third question should be answered affirmatively, and that portion of the remaining balance of the bond proceeds in the Bexar County Road District No. 1 may be used in paying the appraisal expenses here in question.

#### S U M M A R Y

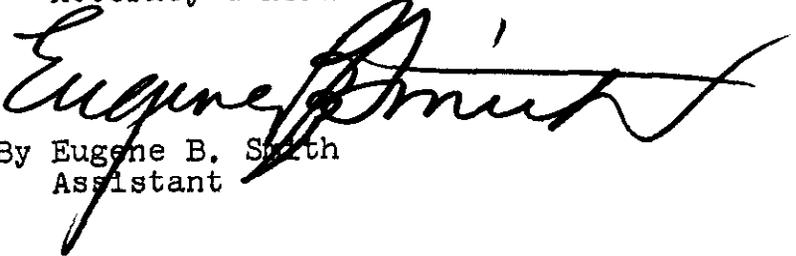
Expenses incurred in the defense of a damage suit arising out of the purchase of land for a State Highway (originally purchased with bond funds) cannot be paid with Constitutional funds (i.e. the "General Fund") other than the unencumbered portion of the County Road and Bridge Fund,

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but such may be paid out of the remaining  
balance of the original bond issue funds.

Yours very truly,

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APPROVED:

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