



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MARR
ATTORNEY GENERAL

Honorable Bill S. Watkins
County Attorney
Llano County
Llano, Texas

Dear Sir:

Opinion No. O-4023

Re: Can money received from the Board of County and District Road Indebtedness be divided among the four commissioners' precincts, and related questions?

Your letter of September 20, 1941, requesting an opinion of this department on the questions stated herein, reads in part as follows:

"Llano County has recently received from the Board of County and District Road Bond Indebtedness approximately \$6,000.00 which the Commissioners' Court has elected to expend '(b) for the construction or improvement of county lateral roads'.

"The Commissioners' Court inquired of the writer the following:

"(1) Can this money be divided among the four commissioners precincts?

"(2) If such a division is legal, should it be divided equally or in compliance with the provisions of Article 6740?

"(3) If the money can not be legally divided among the different precincts, how should it be expended?

"I advised the Court that, in my opinion, this money could not be divided and prorated to

Honorable Bill S. Watkins, Page 2

the different precincts. Article 6674q-7 (V. A. S., Supplement, page 89, paragraph 3) provides in part: 'Whereupon, said Board shall remit said money, or the part thereof to be utilized for such purpose, to the County Treasurer of such county, said money to be deposited by the County Treasurer in accordance with the law, and the same shall be utilized by the county, acting through the Commissioners Court, for the construction of lateral roads.'

"Both the Court of Civil Appeals and the Supreme Court in the case of Shivers V Stovall, 75 S. W. (2) 276; 103 S. W. (2) 363 and 114 S. W. (2) 302 have construed article 6740 which deals with the expenditure of the road and bridge fund but Judge German said 'As to that portion of automobile registration fees retained by Van Landt County, article 6675a-10 Vernon's Ann. Civ. St., expressly provides how same shall be expended, and for that reason it is obvious that article 6740 has no application to same'.

"It is the opinion of the writer that the method of expenditure of funds received from the Board of County and District Road Bond Indebtedness is provided by Article 6674q-7 just the same as article 6675a-10 provides for the expenditure of automobile registration money.

"My answer to their first question answered their second question; and I answered their third question by advising the Court that in my opinion this money, in the words of the statute 'should be utilized by the county, acting through the commissioners court for the construction of lateral roads.' It seems to me that the legislature meant by those words and the two paragraphs of the act that follow come, that the Commissioners Court sitting as a whole should decide which

Honorable Bill S. Watkins, Page 3

lateral roads of the county, regardless of precinct, should be improved or constructed, the cost of such improvement or construction to be paid from the county lateral road fund."

Apparently you have reference to money allocated to your county from the Lateral Road Account, by the Board of County and District Road Indebtedness. The Commissioners' Court has exercised its option as to one of the specified uses of said money as permitted by Article 6674q-7, Vernon's Annotated Civil Statutes, namely, the construction of lateral roads in said county. For the purposes of this opinion, we must assume that the provisions of Article 6674q-7, supra, have been complied with relative to notice to the Board, by the Commissioners' Court, showing the manner in which the Court has exercised its option, etc.

When the Commissioners' Court has exercised its option and determined that the money received from the Lateral Road Account shall be used for the construction of lateral roads in the county, the statute places no restriction or limitation on the Commissioners' Court regarding the manner in which such money is to be expended except "the same shall be utilized by the county, acting through the Commissioners' Court, for the construction of lateral roads." This being true, we think the Commissioners' Court is authorized to expend the above mentioned money for the construction of lateral roads in the county, as the court may in its discretion determine.

It is our opinion that the Commissioners' Court of the county acting in its official capacity can legally divide the above mentioned money among the four commissioners' precincts; provided, of course, that all of said money is used for the construction of lateral roads in the various precincts. It is our further opinion that it is wholly within the discretion of the Commissioners' Court whether or not the money is to be equally divided among the commissioners' precincts. In short, we think that after the money has been allocated to the county and the Commissioners' Court has exercised its option, as provided by Article 6674q-7, supra, to use said money for the purpose of constructing lateral roads therein, the Commissioners' Court is legally authorized to expend such money for the purpose above mentioned, namely, the construction of lateral roads, as said court deems proper. In other words, the Commissioners' Court can expend all of such money in one commissioner's precinct

Honorable Bill S. Watkins, Page 4

for the construction of lateral roads, if said court, within its discretion, determines that such action would be to the best interests of the county, or divide such money among the four commissioners' precincts and expend the same for the purpose of constructing lateral roads in all of said commissioners' precincts or any of them as the court deems best for the interest of the county.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED OCT 1, 1941

Ernest G. Sullivan

By

Ardell Williams

FIRST ASSISTANT
ATTORNEY GENERAL

Ardell Williams
Assistant

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