



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. S. Foreman
County Auditor
Jefferson County
Beaumont, Texas

Dear Sir:

Opinion No. 0-4955

Re: Under the facts stated is the commissioners' court authorized to employ outside legal help to assist the county or district attorney on behalf of either the named precinct employee or the commissioners' court and pay such fee from Road and Bridge Fund, and a related question?

Your letter requesting the opinion of this department on the questions stated therein reads in part as follows:

"In a taxpayers' petition for an injunction directed against the County Judge and Commissioners, the County Auditor, County Clerk and County Treasurer, to enjoin them from paying out County Road and Bridge Funds for dirt purchased from a Precinct employee (acting in the capacity of securing right of way for one of the Precincts), is the Commissioners' Court authorized to employ outside legal help to assist the County or District Attorney on behalf of either the above named Precinct employee or the Commissioners' Court and pay such fee from Road and Bridge Precinct funds?

"If your answer is that such fee can not be paid from Road and Bridge funds, then I ask if it may be paid from any other County Fund?

"In order that you may have a more definite picture of the circumstances involved, I am enclosing herewith a copy of the papers submitted in this suit.

"I might state further that this matter came before the 58th District Court for hearing on Thursday, October 29th, and was deferred until Monday, November 2nd, and at the original hearing on Thursday there were three representatives of the District Attorney's Department present, including the Chief Assistant. The outside Attorney who was employed by the Commissioners' Court was also present."

The enclosed copy of the plaintiff's petition attached to your inquiry reflects that Mr. R. M. Keith has brought suit against P. L. Osborne, an employee of Jefferson County, as an individual, against Jefferson County and against the commissioners' court of Jefferson County, the County Treasurer, the County Clerk, and the County Auditor in their respective official capacities. The suit was brought against Jefferson County and the county officials as named in plaintiff's petition to enjoin alleged illegal action of said County and officials from the payment of certain designated sums and amounts of money to P. L. Osborne. Although P. L. Osborne is an employee of Jefferson County, after carefully reading the plaintiff's petition, it is apparent that he is sued as an individual.

Besides enjoining the county officials and Jefferson County from paying out certain amounts and sums of money to P. L. Osborne the suit is to enjoin the said P. L. Osborne from doing certain things as stated in the petition and to adjudicate other matters between the county and P. L. Osborne, which we do not think is necessary to discuss in this opinion.

In Texas Jurisprudence, Vol. 11, P. 575, it is stated:

"The commissioners' court has power to employ attorneys to assist the regularly constituted officers of the county in the prosecution of its claims and suits, and to pay for such services out of the county funds. It seems, however, that the commissioners' court

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does not have the power to deprive the county attorney of his rightful authority in this regard. The employment of counsel is restricted to special cases where the services of an attorney are required; nor has the court power to make an order which will warrant the payment of county money to an attorney for services neither required nor performed." (Adams vs. Seagler, 250 S.W. 413; Gibson vs. Davis, 236 S.W. 202; Terrell vs. Greene, 31 S.W. 631; Grooms vs. Atascosa County, (Civ. App.) 32 S.W. 188)

Under the holdings of the above mentioned cases, it is apparent that the commissioners' court has the power and authority to employ attorneys in the prosecution of its claims and suits and pay for such services out of the general fund of the county where the county, as a whole, is interested and affected in such proceedings.

In the case of City National Bank of Austin vs. Presidio County, 26 S.W. 775, it was held that the commissioners' court was authorized to employ counsel to represent the commissioners' court in a suit which was brought against the county judge and the commissioners to enjoin alleged illegal action of the commissioners' court in removing the county seat of Presidio County from Fort Davis to Marfa. The court held that while the suit was nominally against the defendants as individuals, it was designed to control the performance of their official acts, and theretofore was a matter of concern to the county. In this connection the court said:

"While it was nominally a suit against them as individuals, its design and effect was to obstruct and control the performance of their official acts, and we are not disposed to hold in such a case that they must do nothing towards defending certain suits, or must employ counsel at their own expense. They had power to employ counsel, and to defray the reasonable expenses thereof out of the county funds."

The court also held that the right to employ counsel was not dependent upon whether the order of the

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commissioners' court which was under attack was valid or invalid. On this point the court said:

"The validity of their acts was not affected by the fact that they were mistaken, or that there was an adverse decision of the question. It has been frequently held that the power cannot be measured by such a rule."

The Road & Bridge Fund is a constitutional fund, (The Commissioners' Court of Henderson County vs. Burk, 262 S.W. 94, and Section 9, Article 3, Texas Constitution) Therefore, the moneys arising from taxes levied and collected for the Road & Bridge Fund is a constitutional fund and the commissioners' court has no power to transfer money from one fund to another or to expend, for one purpose, tax money raised ostensibly for another purpose. (See Carroll vs. Williams, 202 S.W. 504) The commissioners' court has no authority to expend money from the Road & Bridge Fund for the purpose of compensating an attorney who is employed to represent the county. The commissioners' court has no authority whatsoever to employ and pay an attorney to represent F. L. Osborne.

As above stated the commissioners' court has the power and authority to employ attorneys in the prosecution of its claims and suits and pay for such services out of the General Fund of the county where the county, as a whole, is interested and affected in such proceedings. Therefore, it is our opinion that the commissioners' court is authorized to employ an attorney for the purpose of representing the commissioners' court and the county in the above mentioned case and pay him out of the General Funds of the county.

We are returning the papers which were enclosed with your request.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

APPROVED
OPINION
COMMITTEE

BY *Butler*
CHAIRMAN

APPROVED NOV 17, 1942

Ernest Allen
FIRST ASSISTANT
ATTORNEY GENERAL

AW:ff

Encl.