



**THE ATTORNEY GENERAL
OF TEXAS**

GROVER SELLERS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Hon. Charles R. Martin
County Auditor
Harrison County
Marshall, Texas

Opinion No. O-6551
Re: Payment of traveling expenses
of the Commissioners' Court of
Harrison County under the provisions
of House Bill No. 84, 49th Legisla-
ture and under the provisions of the
Harrison County Special Road Law
(1931).

Dear Sir:

We are in receipt of your letter of recent date request-
ing the opinion of this department on the above stated matter.
We quote from your letter as follows:

"The last Legislature passed an Act, same being
H.B. No. 84, amending Article 2350, Title 44, R.C.S.,
and other amendments, whereby they receive raises in
pay according to assessed valuations.

"Under Section 1a, the Commissioners' Court in
each county is hereby authorized to pay the actual
traveling expenses incurred while traveling outside
of the County on official county business never to
exceed Three Hundred Dollars (\$300.00) in any one
year for each said official.

"In Harrison County we have a special road law,
enacted by the Legislature of the State of Texas, a
great number of years back, and section 10 of said
law provides as follows: 'Each County Commissioner
and the County Judge of said court when traveling on
county business relating to the roads or highways of
said county shall be allowed the sum of Seven (7c)
cents per mile as traveling expenses to be paid out
of the Road and Bridge Fund on sworn statement at the
end of each month; provided that the county shall not
pay to the County Judge or any county commissioner
in excess of Fifty (\$50.00) Dollars as traveling ex-
penses for any one month.'

"The Harrison County Road Law repeals Chapter 42,
Acts of the First Called Session of the 27th Legisla-
ture (the same being known as the Davidson Road Law.

"Question, under H.B. 84, would it be legal for
the County to pay the actual traveling expenses

incurred while traveling outside of the County on official county business, in addition to the traveling expense allowed under our Special Road law, quoted above, either on business connected with the Road and Bridge Fund, or General Fund, and if so, would the County Judge be entitled to the traveling expenses also as set out under H.B. 84?

"Also, where the Commissioners Court of a county should decide to send one of its members out of the county with reference to the leasing etc., of lands owned by the Permanent School Fund, which lease money is paid to the Available School Fund, would it be legal to pay this expense out of the Available School Fund, or should the same be paid out of the General Fund? H.B. 84 does not say from what fund this expense should be paid."

House Bill No. 812, Chapter 156, Special Laws, Regular Session, 42nd Legislature, 1931, in part provides:

"Sec. 10. Each County Commissioner and the County Judge of said county (Harrison County) when traveling on county business relating to the roads or highways of said county shall be allowed the sum of Seven (7¢) cents per mile as traveling expenses to be paid out of the Road and Bridge Fund on sworn statement at the end of each month; provided that the county shall not pay to the County Judge or any County Commissioner in excess of Fifty (\$50.00) Dollars as traveling expenses for any one month." (parenthesis ours)

House Bill No. 84, 49th Legislature, in part provides:

"Section 1a. The Commissioners' Court in each county is hereby authorized to pay the actual traveling expenses incurred while traveling outside of the county on official county business never to exceed Three Hundred Dollars (\$300) in any one year for each said official.

"Sec. 4. That all general laws, or parts of general laws in conflict with the foregoing Act, be, and the same are hereby expressly repealed."

House Bill 84 which amends Article 2350, Vernon's Annotated Civil Statutes, is a general law relating to the salaries of county commissioners and the traveling expenses of the commissioners' court. House Bill No. 812, Special Laws of Texas, Regular Session, 1931, Chapter 156, is a special law applicable to Harrison

County; Section 10 of said Act provides for the payment of traveling expenses of the county judge and the county commissioners when such travel is in connection with the roads and highways of said county. The enactment of a general law does not, by implication, operate as a repeal of the special law, although both laws relate to the same subject matter. Also, the general law is applicable in all cases not embraced by the special act. (Townsend v. Terrell, 16 S.W. (2d) 1063; Ellis v. Batts, 26 Texas 703). We note, also, that House Bill No. 84, supra, by the terms of Section 4, repeals only general laws or parts of general laws in conflict therewith; consequently, it would not operate as a repeal of the special law, insofar as the same subject matter is covered in the Harrison County Special Road Law. The special act is construed as constituting an exception to the general law. (Cole v. State, 170 S.W. 1036) It is therefore the opinion of this department that the provisions of the Harrison County Special Road Law would control with reference to the payment of traveling expenses of the county commissioners and the county judge insofar as such travel is related to the roads or highways of said county. It is our further opinion that the payment of traveling expenses, other than travel relating to the roads and highways of said county, should be governed by the provisions of House Bill 84.

With reference to your question as to whether the county judge would be entitled to traveling expenses under the provisions of House Bill No. 84, we note that the Act refers to "the commissioners' court" and sets the maximum amount to be paid for traveling expenses in any one year for "each said official." In view of the fact that the county judge and the several commissioners constitute "the commissioners' court" (Art. 2342, V.A.C.S.), it is our opinion that the county judge would be entitled to actual traveling expenses under the provisions of Section 1a of House Bill 84, subject to the limitation that the county judge's traveling expenses in connection with the county roads and highways of Harrison County should be governed by the provisions of the Harrison County Special Road Law.

With reference to your inquiry as to the proper fund with which to pay the traveling expenses authorized under the provisions of Section 1a, House Bill 84, this department held in Opinion No. 0-6604 that said expenses should be paid from the County General Fund. We quote from said opinion as follows:

"In regard to your question as to which fund the actual traveling expenses should be paid from when incurred under authority of Section 1a of said Art. 2350, R.C.S., as amended by said H.B. No. 84, we quote from the Supreme Court of Texas (Bexar County v. Mann, 157 S.W. (2d) 134) as follows:

"All county expenditures lawfully authorized to be made by a county must be paid out of the county's general fund unless there is some law which makes them a charge against a special fund."

"Therefore, as said Section 1a of Art. 2350, R.C.S., in which authority to pay traveling expenses is given, does not make them a charge against any special fund, we conclude that such traveling expenses should be paid from the General Fund."

With reference to your question as to the proper fund from which to pay expenses incident to the leasing of the Harrison County Public School Lands, we find no constitutional or statutory provision that would authorize the payment of expenses of this character from the Available School Fund.

Art. 2826, V.A.C.S., provides:

"It shall be the duty of the Commissioners Court to provide for the protection, preservation and disposition of all lands heretofore granted, or that may hereafter be granted to the county for education or schools. Const., Art. 7, Sec. 6."

Our courts have held that the expenses of acquisition, preservation and sale of school lands must be paid out of the County General Fund. (Brazoria County v. Padgitt (Civ.App.) 160 S.W. 1170, (error refused); Taber vs. Dallas County, 106 S.W. 332; Dallas County v. Club Land and Cattle Company, 66 S.W. 294; Pulliam v. Runnels Co., 15 S.W. 277; and Tomlinson v. Hopkins County, 57 Tex. 572).

In the case of Dallas County v. Club Land and Cattle Company, supra, the Supreme Court, in justifying the placing of the expenses of administering the school fund as a charge against the General Fund of the county, used the following language:

". . . . As to the reason of the provision, it may be urged that, since the county is made a mere trustee, it is unreasonable to suppose that it was intended to charge it in its individual capacity with the expense of administering the trust fund. The answer is that while in legal contemplation, the county is but a trustee, and the school fund the beneficiary, the county has an important interest in the maintenance of public schools within its limits; and that it is not unreasonable that the framers of the constitution should have deemed it politic to make

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the expense of administering a fund set apart for the support of public schools in the county a charge upon its general revenues. Since the lands are the gift of the state for the special benefit of the educational interest of the county, it is not a hardship to require the county administration to bear the expense of converting the land into money. . ."

In view of the foregoing authorities, you are therefore advised that expenses in connection with the leasing of school lands should be paid from the County General Fund.

We trust that the above and foregoing satisfactorily answers your inquiries.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By /s/ J. A. Ellis
J. A. Ellis, Assistant

APPROVED JUL 2, 1945
/s/ Grover Sellers
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: BWE, CHAIRMAN

JAE:LJ:wb