June 12, 1947

Hon. M. W. Jones
County Auditor
Gaines County
Seminole, Texas

Opinion No. V-246

Re: Authority of the Commissioners' Court to order the issuance of scrip warrants for the payment of claims against the Road and Bridge Fund under the facts presented.

Dear Sir:

Your request for an opinion from this Department on the above subject matter is as follows:

"Gaines County's Road and Bridge Revenue is in turn transferred to the funds of the four precincts. When the funds of one precinct are exhausted, does the Commissioners Court have the authority to order the issuance of script warrants in payment of claims against that precinct for services and materials as long as there is a balance to the credit of all of the Class 2 Funds as a whole?"

In answer to our request for additional information we have received your letter of May 9th which is in part as follows:

"1. The 1947 budget appropriated funds amounting to $25,773.70 for the operations of Precinct #4, the precinct in question. Of this amount, more than $15,000.00 has been expended or will be payable by May 31, 1947.

"2. The script warrants, if issued, can be redeemed in November, 1947, from money received in the October tax collections. A large portion of our valuations being from oil, we have consistently collected approximately 90% of the taxes."
assessed in October. Of course, this will use up a large portion of the money needed for the 1940 operations of the precinct."

In the case of Austin Bros. v. Montague County, 291 S.W. 328, reversed on other points, 10 S.W. (2d) 716, it was held that where a county had issued warrants for the payment of road machinery and said warrants were not intended to be paid out of current revenues, the warrants were void. We quote from said opinion the following:

"Section 7, Art. 11, of our Constitution declares, so far as pertinent, that:

"'No debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least 2% as a sinking fund'.

"It seems clear, both by the terms of the warrants and from the testimony of the commissioners, that the sums specified in the warrants were not to be paid out of the current funds of the year of their issuance. This being true, we think there can be no question under the authorities but that the obligation constituted 'a debt' within the meaning of the constitutional provision we have quoted.

"In the case of McMull v. City of Waco, 39 Tex. 33, 33 S.W. 532, it was said on this subject by our Supreme Court:

"'An obligation binding the city to pay for a matter relating to its ordinary expenses, such payment being, in contemplation of the parties, not intended to be made out of the current funds of the year in which the expenditure is made, or any funds on hand lawfully applicable thereto,
would be a debt, within the meaning of the Constitution.'

"In the case of City of Terrell v. Dessaint, 71 Tex. 770, 9 S.W. 593, our Supreme Court also said on the subject:

"'We freely concede that debts for the ordinary running expenses of a city, payable within a year out of the incoming revenues of the year, and with other indebtedness not clearly in excess of the yearly income for general purposes, can be created by a city. But we think that a debt for current expenses in order to be valid, without a compliance with the constitutional and statutory requirements to which we have referred, must run concurrently with the current resources for such purposes, and that such a debt cannot be created without such compliance, which matures at such a time as would make it a charge upon the future resources of the city.'"

Under Article 689a-11, V.C.S., the budget which is prepared in July and adopted in August seems to be tied to the tax levy made in August for taxes which are to become due and payable on October 1st. This is made manifest by that part of Article 689a-11 reading as follows:

"'When the budget has been finally approved by the commissioners' court, the budget, as approved by the Court shall be filed with the Clerk of the County Court and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the court.'" (Emphasis added)

The budget referred to here is the budget for the following calendar year. The taxes levied in August on the basis of the August budget are taxes which in contemplation of Article 689a are to be applied to the expenditures for the following calendar year. This practice of levying taxes in August for use in the
following calendar year worked well in practice until
the Legislature passed Article 7255b, V.C.S., allowing
a discount on ad valorem taxes paid in advance. Prior
to this law, most of the taxes levied in August were
paid in January of the following year, immediately be-
fore they became delinquent on February 1st., Article
7336, V.C.S. After enactment of Article 7255b, the tax-
of the taxes levied in August are paid in October, No-

tember and December following, in order to take advan-
tage of the discount. This, however, does not change
the fact that taxes collected in October, November and
December 1947 under the 1947 assessments are to be used
for 1948 operations.

In view of the foregoing authorities, scrip
warrants cannot now be issued that will have to be re-
deemed out of taxes collected under 1947 assessments
for such taxes are revenues for 1948 operations and not
current revenues. Under the facts submitted, there
has already been expended all but $9,773.70 of the am-

ount appropriated under the 1947 budget for Precinct
#: the precinct in question. It is, therefore, our
opinion that scrip warrants up to $9,773.70 may be is-
sued if they are within the reasonably anticipated
current revenues for 1947. It is our further opinion
that no scrip warrants may be issued that are intended
to be paid out of revenues for 1948 or any future year.

SUMMARY

Scrip warrants on county road and
bridge fund may be issued by a county
in an amount equal to the difference be-
tween the sum of money already expended
and the amount appropriated in 1946 for
the 1947 budget, provided such warrants
are within the reasonably anticipated
current revenues for the calendar year
1947.

Taxes collected in October, November
and December, 1947, under the 1947 assess-
ment, in a county operating under Art.
689a, V.C.S., are to be used for 1948.
operations and are not current revenues for 1947.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By Fagan Dickson
First Assistant

By John Reeves
Assistant

APPROVED:

RICE DAMEL
ATTORNEY GENERAL