



OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

June 23, 1947

Hon. Roy C. Snodgrass, Jr.
County Attorney
Potter County
Amarillo, Texas

Attention: Hon. John Peterson,
Assistant County Attorney

Opinion No. V-261

Re: Authority of the Com-
missioners' Court of
Potter County to expend
county funds in the im-
provement of city streets
in Amarillo.

Dear Mr. Snodgrass:

Your request for an opinion of this Depart-
ment is substantially as follows:

"The Commissioners' Court of Potter County is desirous of spending approximately \$25,000.00 out of the county road and bridge fund for the improvement of streets in the City of Amarillo. It is their plan to work with the city officials on this program and on each part of the city streets which are improved a percent of county funds will be used, and an equal percent of city funds will be used, and a percent will be paid by each individual land owner adjoining the street. The question has arisen as to whether or not the Commissioners' Court can legally expend county road and bridge funds for any and all of the streets in Amarillo that they desire to improve, or stated another way the question is, are all of the streets in Amarillo a part of the 'county road system'?"

". . .

"In Potter County the majority of the population is located within the city limits and the majority of the roads are in the city limits and it is my opinion that the Supreme Court did not mean to limit a county such as ours by allowing the Commissioners' Court to only improve a road in the city limits when it only connects a county road coming into the city on one side and going out on the other. Another feature of Potter County is that the city, although situated mostly in Potter County, goes into Randall County on the South side and a strict construction of the Stephens County case would mean that the Commissioners' Court cannot spend any funds on roads coming into the city from the North side as it would be impossible to connect with the county road on the South side of Amarillo."

Generally speaking, it is a well settled proposition of law that the control and jurisdiction over streets of a municipal corporation is exclusive in said corporation and counties have the right to expend funds in the improvement of streets within the corporate limits of a city when said streets are a part of the county road system and when done with the consent of the city.

In the case of Hughes v. County Commissioners' Court of Harris County, 35 S. W. 2d 818, the Court stated as follows:

"The county has, by virtue of the provisions of the general laws of this state, as well as by the Harris County local road law, the right to expend its funds in the improvement of a street within the corporate limits of a city which is also a public road of the county, especially so when such improvement is done with the consent and invitation of the city authorities. . .

"In obedience to the mandate of article 8, section 9, of the Constitution, which we think self-enacting, the

Legislature in 1911 and 1899 passed what is now articles 2351 and 2352 of our Civil Statutes. By article 2351, the commissioners' courts were authorized among other things, to lay out and establish public roads and to exercise general control over all public roads in their respective counties, and by article 2352 such court is authorized to levy and collect taxes for road purposes and for the erection of public buildings, streets, sewers, etc. The right to levy and collect taxes for certain purposes carries with it the right to expend the funds when so collected to carry out the purposes for which it was collected. It is immaterial to inquire whether the dominion and control over roads is given by statutes other than the articles named. Article 2352 clearly carries with it the implied power of the commissioners' courts to expend the road funds of their respective counties in the improvement of streets, especially such streets as constitute a part of a public road of the county, because by the provisions of the Constitution counties are given the right to levy and collect taxes for the improvement of both roads and streets. . .

"The weight of authority seems to indicate that under the general law the counties have the constitutional and statutory power to expend their road funds in the improvement of their roads which pass through a municipality, and that they have the right to improve such roads though they be streets of such municipalities, with the consent of the municipalities. State v. Jones, 18 Tex. 874; Smith v. Cathey (Tex. Civ. App.) 286 S. W. 158; Benat v. Dallas County (Tex. Civ. App.) 266 S. W. 540."

The same rule was announced in the case of the City of Breckenridge v. Stephens County, 40 S. W. 2d 43, wherein Judge Critz, speaking for the Supreme Court, stated as follows:

"After a careful investigation of the authorities, including the Constitution and laws of this State, we have reached the conclusion that the commissioners' court does have lawful authority to expend county road bond funds for the improvement of city streets where such streets form integral parts of county roads or state highways, when such improvements are made without conflicting with the jurisdiction of the municipality, or with its consent or approval. Section 52, art. 3, Texas Constitution; State v. Jones, 16 Tex. 874; Smith v. Cathey (Tex. Civ. App.) 226 S. W. 158, 160; Cannon v. Healy Construction Co. (Tex. Civ. App.) 242 S. W. 526, 529 (writ refused).

"Section 52 of article 3 of our State Constitution authorizes counties and political subdivisions and defined districts thereof to issue bonds for the purpose of: '(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof.'

"The constitutional provision above referred to expressly provides that road districts 'may or may not include towns, villages or municipal corporations.' Thus by the express terms of the Constitution a municipal corporation may be an integral part of a road district. As a part of the road district, the property of the city or town is subject to road district taxes just the same as property of the district located outside such municipality. If a city or town is a part of a road district, the commissioners' court has the

right by the very express provisions of the Constitution to expend road district bond funds on such town or city streets where such streets are parts of and form connecting links in county of state highways."

It will be observed from the foregoing that if an improvement is made, the same must be confined to the streets forming a part of the county road system, and must be done with the consent of the municipal corporation within which said streets are located. In the Breckenridge case above cited, a distinction was drawn between streets forming a part of a county road system and streets generally. It was held that the Commissioners' Court could bind itself to spend county road bond funds to aid the city in improving streets forming a part of the county roads but could not bind itself to aid the city in improving other streets. It is obvious that they intended to draw a distinction between streets, speaking generally of the arteries of traffic within a municipality, and such streets as form a continuation of a county road, but in any event a street which has been designated by a county as a part of its system. (Attorney General's Opinion No. 0-1190) Inasmuch as a county may, with the consent of the city, improve the streets of such city forming a part of the "county road system", it necessarily follows that a determination must be made as to what constitutes a county road system. The Constitution commands that the laying out, constructing and repairing of county roads shall be provided for by general laws. Accordingly, general laws have been enacted setting up a State Highway Commission to administer State highways and delegating the control of county roads to the County Commissioners' Courts. Therefore, if a public road has been established and used as a county road, the county would be authorized to expend money on such county road if the same traversed a city, and any money expended would be authorized on the improvement of streets if the same have been established and used and are an integral part of a county road. (Art. 8702-8716, V. C. S.) By virtue of the Breckenridge case, if the street desired to be improved is a connecting link in a duly established county road the same rule would be applicable, the words "connecting link" meaning to unite or link together. A connecting link by its very name must be something that holds two different elements together. (38 Pac. (2) 105).

In view of the foregoing it is believed that the streets of Amarillo connecting county roads would be "connecting links" despite the fact that a portion of Amarillo is in Randall County. The only limitation imposed by the physical facts would be jurisdictional, that is, the improvement would go only to the county line. Therefore, it is the opinion of this Department that those roads established as county roads and those city streets of Amarillo forming an integral part of the county road system may be improved by the county with the consent of the city of Amarillo. Further, those streets forming a connecting link for county roads traversing the city of Amarillo may be improved, but only to the county line of Potter and Randall counties.

Your brief furnished this office has materially aided in the discussion of the subject under consideration and is appreciated.

SUMMARY

County Road and Bridge Funds may be expended in the improvement of county roads passing through a city, though they be streets of such city, provided consent is obtained from the city and such streets are integral parts of the county roads; streets forming a "connecting link" on duly established county roads may be improved by the county with the consent of the city. City of Breckenridge v. Stephens County, 40 S. W. (2) 43; Hughes v. County Commissioners' Court of Harris County, 35 S. W. (2) 818.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By

Burnell Waldrep
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Assistant

BW:djm:bb:WB

This opinion was considered and approved in Conference.

APPROVED:

Price Daniel
PRICE DANIEL
ATTORNEY GENERAL