



**THE ATTORNEY GENERAL
OF TEXAS**

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**PRICE DANIEL
ATTORNEY GENERAL**

January 24, 1948

**FAGAN DICKSON
FIRST ASSISTANT**

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

Opinion No. V-484

Re: Authority of Commission-
ers Court of Potter
County to expend money
from the Road & Bridge
Fund to improve city
streets.

Attention: Hon. John Peterson
Asst. County Attorney

Dear Mr. Snodgrass:

Your request for an opinion of this department relating to the expenditure of funds from the Road and Bridge Fund of Potter County in the improvement of certain streets in the City of Amarillo is substantially as follows:

"The Commissioners Court desires to know whether or not they can legally expend money from the road and bridge fund on certain streets within the City of Amarillo and I am sending you under separate cover a map which includes the greater portion of Potter County, Texas, and shows all county roads and city streets and which map has marked on it the roads desired to be improved.

"The roads to be improved are:

"At the Glenwood School,
24th Street from Cleveland to Mirror,
Mirror Street from 24th to 25th,
25th Street from Mirror to Cleveland.

"At the Senborn School,
8th Street from Houston to Mirror,
Mirror Street from 7th to 8th,
Roberts Street from 6th to 8th,
7th Street from Roberts to Williams,
Williams Street from 7th to 8th,

8th Street from Williams to Ross.

"At the Dwight Morrow School,
16th Avenue from Arthur to Houston.

"The tentative agreement is as follows:
The City of Amarillo will pay for the excavating and grading of the roads. The school districts will pay for the topping of the roads. The property owners will pay for the curb and gutter work and the County will pay for the calliche and for putting it on the ground.

"We would like to point out some additional facts:

"(1) That all of this work is to be done in Precinct #1 and better than 90% of the road and bridge fund is made up from automobile license fees paid by residents of Precinct #1.

"(2) That better than 90% of the people of Potter County reside in Precinct #1.

"(3) That the road improvements to be done are around and near three schools and that students of these schools in some instances come from other precincts and during the winter months, the roads not being hard surfaced creates an imbearable situation.

"(4) Numerous people in the City of Amarillo have pointed out to the Commissioners Court the inequity in their minds of not being able to spend county road and bridge funds for streets in the City of Amarillo in Precinct #1 where over 90% of the money in making up the fund comes from, except on main arteries through the city which connect with roads coming into the city limits and which roads are already improved adequately.

"In view of the above set out facts the Commissioners Court submits to you the question of whether or not the county road and bridge fund can be spent on the streets enumerated and set out above and designated on the map furnished you and under the conditions reflected in the fact situation set out above."

Opinion No. V-261, addressed to you, dated June 23, 1947, held that County Road and Bridge Funds

may be expended in the improvement of city streets with the consent of said city, provided such streets are an integral part of the county road system, citing City of Breckenridge v. Stephens County, 40 S. W. (2d) 43, and Hughes v. County Commissioners Court of Harris County, 35 S. W. (2d) 818. The question now presented is whether the Commissioners Court of Potter County has the authority to improve streets in the City of Amarillo which do not form an integral part of the county road system of said county. It is assumed from your factual situation, as well as the map attached thereto, that the streets in question are not city streets forming a part of the county road system of Potter County.

In the case of Williams v. Carroll, 182 S. W. 29, the court held that a street generally means a passageway within the bounds of a municipal corporation, while a road means a county highway forming a communication between the city limits of one city or town and the city limits of another city or town; and while a street is a highway it is not necessarily true that a highway is a street.

As to the question of exclusive jurisdiction over streets, the court in Gabbert v. City of Brownwood, 176 S. W. (2d) 344, stated as follows:

"In 1891 this same question was again presented in Norwood vs. Gonzales County, 79 Tex. 218, 14 S. W. 1057, 1058, wherein the Supreme Court declared that the commissioners' court was without jurisdiction to open up a road through land within the corporate limits of the city of Goliad. That the word jurisdiction was used advisedly is shown by the holdings that the proceedings were without effect and incapable of ratification, even after the exclusion of the particular section of the road from the city limits, thereby placing it within the jurisdiction of the commissioner's court. This resulted, of course, from the familiar principle that whatever is void as distinguished from merely voidable, cannot be validated by ratification. The decision in Norwood v. Gonzales County, supra, has so far as we know, never been overruled and has been followed in the following cases: Benat

v. Dallas County, Tex. Civ. App., 266 S. W. 539, writ refused, Rueter v. State, 43 Tex. Cr. R. 572, 67 S. W. 505; Bluit v. State, 56 Tex. Cr. R. 525, 121 S. W. 168, dissenting opinion; Cowand v. State, 83 Tex. Cr. R. 298, 202 S. W. 961; City of Breckenridge v. Stephens County, Tex. Civ. App., 26 S. W. 2d 405. It is true that the last mentioned case (by this court) was reversed by the Supreme Court, but that in so doing that court did not overrule the Norwood case is clearly shown by the following quotation from the opinion: 'Of course, the town or city governing board primarily has paramount jurisdiction of the streets and highways thereof, and the commissioners' court would have no authority to improve streets or highways within municipalities in conflict with the jurisdiction of the city to improve the same.'

Article 6703, Vernon's Civil Statutes, provides with reference to Commissioners' Court that:

". . . Said court shall assume and have control of the streets and alleys in all cities and incorporated towns in Texas which have no defacto municipal government in the active discharge of their official duties."

The decisions of the Texas courts have repeatedly held that the Commissioners' Court is a court of limited jurisdiction and has only such powers as are conferred upon it by the statutes and Constitution of this State, either by expressed terms or by necessary implication. Section 18 of Article V, of the Texas Constitution, Article 2351, V. C. S.; Von Rosenberg v. Lovett, 173 S. W. 508; Galveston H. & S. A. Ry. Co. v. Uvalde County, 167 S. W. (2d) 1084; 11 Tex. Jur. 564.

By virtue of the fact that the jurisdiction of city streets is vested exclusively in the City Government and in the absence of authority granting to Commissioners' Courts authority over streets in said cities, it is the opinion of this Department that those streets in Amarillo which do not form an integral part of the county road system or connecting links in county roads,

may not be improved or repaired by expenditures from the road and bridge fund of said county.

In your opinion request you state that it is inequitable not to be able to spend the county road and bridge fund for streets in the City of Amarillo in Precinct #1 since at least 90% of the money comes from said precinct. This Department is not in a position to give an opinion as to the division of funds inasmuch as the same is left to the sound discretion of the Commissioners' Court. Suffice it to say that as long as the Commissioners' Court exercises its best judgment and does not act arbitrarily in regard thereto, its findings will not be disturbed. In this connection we are enclosing copies of Attorney General's Opinions Nos. 0-1091 and V-347.

While we are in accord that your factual situation reflects a hardship, nevertheless, an examination and review of all the statutes relating thereto do not infer the existence of authority to improve city streets not a part of the county road system but indicates the contrary. If, in the future, your factual situation is such that roads are constructed by the county and lead to the streets in question in such a manner that they necessarily become a part of the county road system sufficient authority may exist for improving the streets as a part of the system. However, the duty of supplying such authority for the improvement of the streets in your factual situation is vested wholly with the Legislature.

SUMMARY

A Commissioners' Court may not legally expend funds from the road and bridge fund of a county in the improvement of city streets within a city which do not form a part of the county road system or connecting links in a county road.

Yours very truly

APPROVED:

ATTORNEY GENERAL OF TEXAS

Fagan Dickson

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BW:mw -encl.

By *Burnell Waldrep*
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