



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

March 31, 1948

**Hon. H. P. Guerra, Jr.
County Attorney
Starr County
Rio Grande City, Texas**

Opinion No. V-532

**Re: The validity of a Com-
missioners' Court or-
der that all road em-
ployees shall be hir-
ed and all road mater-
ials shall be pur-
chased by the Court,
acting through the
County Judge, rather
than by individual
county commissioners.**

Dear Sir:

Reference is made to your recent request which reads, in part, as follows:

"The Commissioners Court of Starr County has passed a resolution to the effect that from and after the 28th day of February 1948, all road hands, foremen and any and all persons now employed on the county roads, who have been employed by the commissioners of the respective precincts, be discharged and that upon their discharge, the Commissioners Court shall employ all such county road workers in the various precincts. The resolution also provides that all materials and supplies necessary in the maintenance of such roads shall be purchased by the court and not by the respective commissioners and further provides that the County Judge is thereby appointed the sole person authorized to employ such workers and make all purchases. This resolution was passed, two commissioners voting for it, two against it and the County Judge voting for it.

"The two commissioners who voted against the resolution, consider that

it is an attempt on the part of the two commissioners who voted for it and the County Judge to gain control over all road matters within the precincts of these two commissioners who voted against the resolution. They consider that this would be tantamount to relieving them of their duties as commissioners for their respective precincts which they assumed upon being elected and that it would effect a delegation of their duties to someone who is not charged by law with the performance of such duties. . . .

"I request your opinion as to the legal effect of the resolution which I have described above."

You also advised us that Starr County is not operating under the optional County Road Law.

Article 2351, V. C. S., provides, in part, that:

"Each commissioners court shall:...

"3. Lay out and establish, change and discontinue public roads and highways.

"4. Build bridges and keep them in repair.

"5. Appoint road overseers and apportion hands.

"6. Exercise general control over all roads, highways, ferries and bridges in their counties."

Article 6713, V. C. S., is as follows:

"Except when road commissioners are employed, the county commissioners shall be supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioners precinct once each month. He shall also make a sworn report to each

regular term of the commissioners court held in his county during the year, showing:

"1. The condition of all roads and parts of roads in his precinct.

"2. The condition of all culverts and bridges.

"3. The amount of money remaining in the hands of overseers subject to be expended upon the roads within his precinct.

"4. The number of mile posts and finger boards defaced and torn down.

"5. What, if any, new roads of any kind should be opened in his precinct, and what, if any, bridges, culverts, or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of such improvements; also the name of every overseer who has failed to work on the road, or in any way neglected to perform his duty.

"Said report shall be spread upon the minutes of the court, to be considered in improving public roads and determining the amount of taxes levied therefor."

Article 6740, V. C. S., provides for the expenditure of the road and bridge fund of the various counties, and Article 6741, V. C. S., provides that:

"The commissioners court may make and enforce all reasonable and necessary rules and orders for the working and repairing of public roads, and to utilize the labor to be used and money expended thereon, not in conflict with the laws of this State. Said court may purchase or hire all necessary road machinery, tools or teams, and hire such labor as may be needed in addition to the labor required of citizens to build or repair the roads."

If Starr County has appointed a road superin-

tendent for the county or one such superintendent for each precinct of the county, pursuant to Article 6743, V. C. S., then Article 6751, V. C. S., is applicable and is as follows:

"The commissioners court of any such county is authorized to purchase or hire all necessary road machinery, tools, implements, teams and labor required to grade, drain, or repair the roads of such county, and said court is authorized and empowered to make all reasonable and necessary rules, orders and regulations not in conflict with law for laying out, working and otherwise improving the public roads, and to utilize the labor and money expended thereon, and to enforce the same."

The court, in the case of *Stovall v. Shivers*, (Civ. App.) 75 S. W. (2d) 276, affirmed 129 Tex. 256, 103 S. W. (2d) 363, said:

"By Article 2342 of the Revised Statutes, it is provided that the several commissioners, together with the county judge, shall compose the 'commissioners court.' Such court is manifestly a unit, and is the agency of the whole county. The respective members of the commissioners court are therefore primarily representatives of the whole county, and not merely representatives of their respective precincts. The duty of the commissioners court is to transact the business, protect the interest, and promote the welfare of the county as a whole. Among the powers conferred upon such court by article 2351 are the following: The power to lay out and establish, change and discontinue roads and highways, the power to build bridges and keep them in repair, and the power to exercise general control over all roads, highways, ferries, and bridges in their counties."

We believe that the resolution is merely cumulative insofar as it states that the Commissioners' Court shall employ all such county road workers in the various precincts, since it is incumbent upon the Commissioners' Court to perform this duty under the statutes, even in the absence of such a resolution. True,

each Commissioner may recommend to the Commissioners' Court that it employ certain persons to work on the county roads in his respective precinct, but the Commissioner himself has no authority to employ road hands. Nor do we believe that the Commissioners' Court may delegate this power to the County Judge.

The same rule of law is applicable to the Commissioners' Court relative to purchases made by the county. We shall quote only those statutes which deal with county purchases which we deem pertinent to your inquiry.

Article 1659, V. C. S., provides, in part, as follows:

"Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, . . . In cases of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids."

Article 6729, V. C. S., provides, in part, as follows:

"The commissioners court may use either timber, earth, stone, gravel, or other necessary material most convenient therefor to build, repair, or maintain any public road or any part of any public road in the county without regard to the location or extent thereof or the funds from which said repair or maintenance is paid. In such case the owner of any such material shall be paid a fair and just compensation therefor as may be agreed upon by the owner or his agent and the commissioners court."

The act further provides in the event the Commissioners' Court and the owner of the material fail to agree upon the price to be paid for such material that the Commissioners' Court may condemn same.

Article 2368a, Sec. 2, as amended in 1947, R. S., 50th Leg., provides, in part, as follows:

"Sec. 2. No county acting through its Commissioners Court and no city in this State shall hereafter ~~make~~ any contract calling for or requiring the expenditure or payment of Two Thousand Dollars (\$2,000) or more out of any fund or funds of any county or subdivision of any county creating or imposing an obligation or liability of any nature or character upon such county or any subdivision of such county, or upon such city, without first submitting such proposed contract to competitive bids."

It further provides for advertisement, etc., together with a calamity clause.

We think it abundantly clear from the above statutes that it is the duty of the Commissioners' Court to make such purchases and further that the power is a non-delegable one. Hence, the Commissioners' Court may not authorize the County Judge to make such purchases.

By virtue of the foregoing, it is the opinion of this Department that the resolution passed is of no force and effect insofar as it attempts to delegate to the County Judge the power to employ road hands and to make purchases for the county.

SUMMARY

That portion of a resolution passed by the Commissioners' Court of Starr County which provides that all county road employees shall be hired and all road materials shall be purchased by the County Judge is invalid, since this duty is imposed upon the Commissioners' Court. Arts. 1659, 2368a and 6729, V. C. S.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED:

Price Daniel
ATTORNEY GENERAL

BA:mv

By *Bruce Allen*
Bruce Allen
Assistant