



THE ATTORNEY GENERAL
OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN, TEXAS

February 3, 1950

Hon. William L. Taylor
Prosecuting Attorney
Harrison County
Marshall, Texas

Opinion No. V-995.

Re: The authority of the
Commissioners' Court
to retain attorneys to
represent the County
during the taking of
depositions under the
submitted facts.

Dear Sir: .

Reference is made to your recent request in
which you ask:

"(1) Can the Commissioners' Court con-
tract with attorneys to represent Harrison
County during the taking of depositions be-
fore any suit involving said county has been
filed and at a time when there is no absolute
certainty that a law suit of any kind involv-
ing said county will be filed?"

"Assuming that the answer to the first
question is in the affirmative,

"(2) Can the Commissioners' Court af-
ter part of the services have been performed
by the attorneys, enter an order to pay the
attorneys for services performed, where no
arrangements as to the fee to be charged were
made prior to part performance of services
by said attorney?"

You stated in the brief submitted with your re-
quest:

"At all of these deposition hearings the
law firm . . . has had an attorney present
. . . According to the County Judge the firm
was asked to sit in on the hearings in behalf
of the County with the understanding that ar-
rangements for attorneys' fees would be made
later. No orders have been entered by the
Commissioners' Court relative to the employ-
ment."

It is stated in Volume 11 of Texas Jurisprudence at page 575:

"The commissioners' court has power to employ attorneys to assist the regularly constituted officers of the county in the prosecution of its claims and suits, and to pay for such services out of the county funds. It seems, however, that the commissioners' court does not have the power to deprive the county attorney of his rightful authority in this regard. The employment of counsel is restricted to special cases where the services of an attorney are required; nor has the court power to make an order which will warrant the payment of county money to an attorney for services neither required nor performed."

In Galveston County v. Gresham, 220 S.W. 560 (Tex.Civ.App.1920, error ref), the court had before it the question of whether the Commissioners' Court could employ an attorney to represent the county in the building of a sea wall. It was said:

"And if the commissioners' court thus had the broad power to construct this extension of the sea wall, its like authority to enlist the services of the appellee to that end would follow as a necessary implication; that being deemed essential to the exercise of the power and duty imposed upon it. Bank v. Presidio County, 26 S.W. 775; Waterbury v. City of Laredo, 60 Tex. 519."

It is apparent from the foregoing that the Commissioners' Court has the power and authority to employ attorneys in the prosecution of its claims and suits and to pay for such services out of the general fund of the county where the county, as a whole, is interested and affected in such proceedings.

You are therefore advised in answer to your first question that the Commissioners' Court can contract with attorneys to represent Harrison County during the taking of depositions before any suit involving the county has been filed and at a time when there is no absolute certainty that a law suit of any kind involving the county will be filed.

We will now consider your second question. In City of San Antonio v. French, 80 Tex. 575, 16 S.W. 440 (1891), it is stated:

"It may be that when a municipal corporation has received the benefit of a contract, which it had the power to make but which was not legally entered into, it may be compelled to do justice, and to pay the consideration, or at least to pay for what it has received. In such cases it is said that the law will imply a contract . . . As said by Mr. Justice Field in the case of Gas Co. v. San Francisco, 9 Cal. 453: 'When the contract is executory, the corporation cannot be held bound unless the contract is made in pursuance of the provisions of its charter; but where the contract is executed, and the corporation has enjoyed the benefit of the consideration, an implied assumpsit arises against it.'"

In Sluder v. City of San Antonio, 2 S.W.2d 841, (Tex.Comm.App.1928) the following is stated:

"Since the decision in the French Case our courts have uniformly announced the doctrine that where a county or municipality receives benefits under a contract, illegal because not made in conformity with the Constitution or statute of the state, or charter provision of the city, it will be held liable on an implied contract for the reasonable value of the benefits which it may have received. In other words, while such contracts are void, and no recovery is permitted thereon, our courts hold that common honesty and fair dealing require that a county or municipality should not be permitted to receive the benefit of money, property, or services, without paying just compensation therefor. Under such circumstances, a private corporation would clearly be liable under an implied contract. There can be no sound reason why the same obligation to do justice should not rest upon a municipal corporation."
(Emphasis ours)

You are therefore advised that it is our opinion that the Commissioners' Court of Harrison County may,

after part of the services have been performed by the attorneys, enter an order to pay the attorneys for services performed, where no arrangements as to the fee to be charged were made prior to the time of part performance of the services by such attorneys.

SUMMARY

The Commissioners' Court can contract with attorneys to represent Harrison County during the taking of depositions before any suit involving the county has been filed and at a time when there is no absolute certainty that a law suit of any kind involving the county will be filed. 11 Tex. Jur. 575, Counties, Sec. 45; Galveston County v. Gresham, 220 S.W. 560 (Tex.Civ. App.1920, error ref.).

After part of the services have been performed by the attorneys the Commissioners' Court of Harrison County may enter an order to pay the attorneys for the services actually performed, even though no arrangements as to the fee to be charged were made prior to the time of part performance by the attorneys. City of San Antonio v. French, 80 Tex. 575, 16 S.W. 440 (1891); Sluder v. City of San Antonio, 2 S.W. 841 (Tex.Comm. App.1928).

Yours very truly,

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APPROVED:

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