



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 14, 1951

Hon. Tom Reavley
County Attorney
Nacogdoches County
Nacogdoches, Texas

Opinion No. V-1151

Re: Authority of the commissioners' court to increase the compensation of road department employees without approval by the County Road Engineer under the Optional County Road Law of 1947 and a related matter.

Dear Sir:

We refer to your recent request which reads in part as follows:

"The opinion of your Department is respectfully requested on the two questions stated below concerning the power of the Commissioners Court to set wages for the road employees against or without recommendation of the County Road Engineer and concerning the nature of public hearing required by Section 7, Article 6716-1, V.C.S.

"Nacogdoches County has duly adopted the provisions of the Optional County Road Law of 1947, Art. 6716-1, V.C.S.

"My opinion has been requested on the following two questions:

"(1) 'Can the Commissioners Court, without the recommendation and over the protest of the County Road Engineer, raise the salaries or wages of road department employees?'

"(2) 'Under Section 7, Article 6716-1, V.C.S., pertaining to the removal of the County Road Engineer by the Commissioners Court, what nature of public hearing must be held? Must the reasons for removal be stated to the County Road Engineer prior to

the hearing? Must probative evidence be presented upon the hearing to support those reasons? Is the Road Engineer entitled to present his own witnesses and evidence and to be represented by counsel?"

In Att'y Gen. Op. V-537 (1948), it is stated:

"Generally speaking, we are of the opinion that the Commissioners' Court of Brazoria County, after adoption of the Optional County Road Law of 1947, has authority to decide and outline the general principles and the general over-all system governing the construction and maintenance of county roads in that county. The Commissioners' Court has all of the powers and duties given by Article 2351, V.C.S., which are not delegated to the County Road Engineer in the Optional County Road Law of 1947."

Since Article 6716-1, V.C.S., does not confer authority on the County Road Engineer to set the salaries of county road employees, and in view of the foregoing, we agree with you that the commissioners' court may raise the salaries or wages of the road department employees without the recommendation and over the protest of the County Road Engineer.

It was held in Dunbar v. Brazoria County, 224 S.W.2d 738 (Tex.Civ.App. 1949, error ref.), that the County Road Engineer was not a county officer within the meaning of Section 24 of Article V of the Constitution of Texas and therefore was subject to be removed by the commissioners' court under Section 7 of Article 6716-1.

Section 7 of Article 6716-1, V.C.S., provides:

"The County Road Engineer shall hold his position for an indefinite term and may be removed by a majority vote of the Commissioners Court. Removal shall not become effective until thirty (30) days after he shall have been notified in writing of the intention of the Commissioners Court to remove him, and until after a public hearing on the question of his removal shall have been held, if such hearing is requested of the Commissioners Court in writing by the County Road Engineer."

The removal of the County Road Engineer by the commissioners' court under the above statute is essentially administrative or executive in nature. Under its provisions a public hearing on the question of his removal must be held if requested by him in writing, but this does not change the nature of the proceeding.

The statute requires that notice be given to the engineer by the commissioners' court of its intention to remove him, but it does not require that the reasons for such removal be stated in the notice or prior to the hearing. In fact, the record in the Dunbar case reflects that the engineer was not given the reasons for the removal until the day of the hearing, and this fact was brought to the attention of the Supreme Court in the application for writ of error in that case. It is believed, however, that fair play would dictate that the reasons be given in advance of the hearing in order that he might have a reasonable time in which to secure witnesses in his behalf. A public hearing would necessarily imply that evidence should be presented in support of the reasons assigned for removing the engineer from office and that the engineer be given the opportunity, either in person or through counsel, to present witnesses in his behalf.

SUMMARY

The commissioners' court in a county operating under the provisions of the Optional County Road Law of 1947 (Art. 6716-1, V.C.S.) may raise the salaries or wages of road department employees without the recommendation and over the protest of the County Road Engineer.

The removal of a County Road Engineer by the commissioners' court under Section 7 of Article 6716-1, V.C.S., is administrative or executive in nature. Notice must be given to the engineer by the commissioners' court of its intention to remove him, but the reasons assigned for such removal are not required to be stated in the notice or prior to the public hearing. A public hearing implies that evidence should be presented in support of the reasons assigned for removing the engineer from office and that the

Hon. Tom Reavley, page 4 (V-1151)

engineer be given the opportunity, either
in person or through counsel, to present
witnesses in his behalf.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Jesse P. Luton, Jr.
Reviewing Assistant

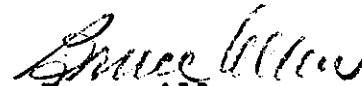
Charles D. Mathews
First Assistant

BA:mw

Yours very truly,

PRICE DANIEL
Attorney General

By



Bruce Allen
Assistant