



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

February 13, 1952

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

Opinion No. V-1407

Re: Mandatory or permissive
character of provisions
for a county engineer
in the Harrison County
Road & Bridge Law.

Dear Mr. Taylor:

Your request for an opinion from this office presents the following question:

Does House Bill No. 812, Special Laws of the 42nd Legislature, R.S. 1931, ch. 156, p. 303 (Harrison County Road Law), make it mandatory for the commissioners' court of Harrison County to employ a county engineer and to have a county engineer in constant employment with Harrison County?

The pertinent sections of House Bill No. 812, Special Laws 42nd Leg., R.S. 1931, ch. 156, p. 303 (Harrison County Road Law), provide in part:

"Section 1. That Chapter 42, Acts of the First Called Session of the 37th Legislature, (the same being known as the Davidson Road Law) be and the same is hereby in all respects repealed insofar as the same applies to Harrison County.

"Section 2. The Commissioners' Court of Harrison County is hereby authorized and empowered to employ a County Engineer, whose duties, compensation and liabilities shall be such as are imposed by this Act. The said County Engineer shall devote his entire time to the construction and maintenance of the County Roads.

"Sec. 3. That said County Engineer shall be appointed by the Commissioners' Court of said county within ninety (90) days

after the passage of this Act at a Regular Meeting or Called Session thereof. That he shall have charge of all public road construction and public road maintenance, together with the building of bridges and culverts, in his County except as is otherwise herein expressly provided. Said County Engineer within twenty (20) days after his appointment shall take and subscribe to the oath required by the Constitution, and enter into bond, payable to the County Judge or his successors in office, with good and sufficient sureties to be approved by the County Judge, in the sum of Five Thousand (\$5,000.00) Dollars, conditioned upon said Engineer faithfully and effectively discharging and performing all the duties required by law or imposed on him by the Commissioners' Court of his County, which bond shall be filed and recorded as other official bonds and shall not be void for the first recovery, but may be sued on from time to time until the whole amount is exhausted.

"Sec. 4. Said County Engineer shall be a qualified Civil Engineer and a resident of the State of Texas; he shall serve at the will of the Commissioners' Court, and may be removed by said Commissioners' Court for any reason which in the opinion of said Court justifies removal. He shall receive such salary as may be determined by the Commissioners' Court to be paid out of the Road and Bridge Fund. That said County Engineer shall subject to the orders of the Commissioners' Court, have general supervision over the construction and maintenance of all public roads and highways of his county, together with the building of bridges and culverts; he shall superintend the laying out of new roads subject to the orders of the Commissioners' Court, and shall forthwith make or cause to be made a road map of the county showing the location, mileage, and classification of the different roads and highways in said county. . . ." (Emphasis added throughout.)

An act should be given a fair, reasonable, sensible construction, considering its language and subject matter with a view of accomplishing the legislative intent and purpose. In other words, construction should accord with common sense and justice, and irrational conclusions or deductions should be avoided. Clark v. W. L. Pearson & Co., 121 Tex. 34, 39 S.W.2d 27 (1931); State v. Stein, 36 S.W.2d 698 (Tex. Comm. App. 1931). Doubtless a court will give due regard to the language used in a statute or provision thereof in determining whether it is mandatory or merely directory. Words of permissive or mandatory character will ordinarily be given their natural effect, but when there is room for construction permissive words will be given mandatory significance or mandatory words will be held to be directory, as appears to be necessary to effectuate the legislative intent. Hess & Skinner Engineering Co. v. Turney, 109 Tex. 208, 203 S.W. 593 (1918); McLaren v. State, 82 Tex. Crim. 449, 199 S.W. 811 (1917).

It is stated in 2 Sutherland, Statutory Construction (3rd Ed. 1943) 338, Sec. 4704:

" . . . A statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction. . . .

"If upon examination the general meaning and object of the statute is inconsistent with the literal import of any clause or section, such clause or section must, if possible, be construed according to that purpose. But to warrant the change of the sense to accommodate it to a broader or narrower import, the intention of the legislature must be clear and manifest."

The court stated in Wood v. State, 133 Tex. 110, 126 S.W.2d 4, 7 (1939):

"It is the settled law that statutes should be construed so as to carry out legislative intent, and when such intent is ascertained it should be given effect even

though literal meaning of words used in the statute is not followed. . . ."

In the light of the above authorities, section 2 of House Bill 812 should be interpreted as being mandatory in nature, although the actual wording of it is merely directory, if such is the intent of the Legislature as determined from the act as a whole.

Looking to the remainder of the act, we find in Section 3 provisions which clearly indicate a mandatory intention on the part of the Legislature. The first sentence says that "said County Engineer shall be appointed by the Commissioners Court of said county within ninety (90) days after the passage of this Act at a Regular Meeting or Called Session thereof." The balance of Section 3 and all of Section 4 indicate that the appointment of an engineer was to be mandatory.

In view of the foregoing, it is our opinion that the Legislature intended to provide a county engineer to be in constant charge of all public road construction and maintenance in Harrison County, subject of course to over-all supervision by the Commissioners' Court. See Att'y Gen. Op. V-1315 (1951). Although the engineer serves at the will of the county commissioners, the statute contemplates that upon the removal of one county engineer another will be appointed.

SUMMARY

House Bill No. 812, Acts 42nd Leg., Special Laws R.S. 1931, ch. 156, p. 303 (Harrison County Road Law), makes it mandatory for the commissioners' court of Harrison County to employ a county engineer and to have a county engineer in constant employment with Harrison County.

APPROVED:


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Yours very truly,

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Attorney General

By 
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