



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 16, 1959

Honorable Jules Damiani, Jr.
Criminal District Attorney
Courthouse
Galveston, Texas

Opinion No. WW-718

Re: After a county budget is established under Section 9 of Article VIII of the Texas Constitution, can funds be taken out of a General Fund and put into a Permanent Improvement Fund for the purpose of enlarging and equipping an existing County Hospital and related questions.

Dear Mr. Damiani:

You have requested the opinion of this office on the following questions:

"Once the County Budget for the year is established, under Article 8, Section 9 of the Texas Constitution, can funds be taken out of a General Fund and put into a Permanent Improvement Fund with the idea of using these funds to enlarge and equip an existing County Hospital, the Commissioners Court having taken this into consideration at the time the General Fund was set in the Budget, their having appropriated an excessive amount of money for this purpose?"

"Can funds to enlarge and equip an existing County Hospital come out of the general fund, it being provided for by the Commissioners Court at the time of fixing the budget, or must these funds come out of the Permanent Improvement Fund?"

Section 9 of Article VIII of the Constitution of Texas provides in part:

". . . provided further that at the time the Commissioners Court meets to levy the annual

tax rate for each county it shall levy whatever tax rate may be needed for the four (4) constitutional purposes; namely, general fund, permanent improvement fund, road and bridge fund and jury fund. . . ."

Thus, the Constitution makes specific provisions for raising monies for the General Fund and the Permanent Improvement Fund. It sets out the duty of the Commissioners Court to levy taxes as needed and the monies arising from these taxes levied and collected for each of these enumerated purposes are constitutional funds.

The authority of the Commissioners Court to transfer funds from one designated fund to another is limited by the constitutional restriction. The Constitution contemplates that tax money collected from the people ostensibly for one purpose shall be expended for that purpose alone. The provisions of Section 9, Article VIII were designed not merely to limit the tax rate for certain purposes, but to require any and all money raised by taxation for any purpose to be applied, faithfully, to that purpose as need therefor and not to any other purpose or use whatsoever.

The Commissioners Court cannot levy a tax for one purpose and use the money for another, and it has no power to transfer this money from one constitutional fund to another. Ault v. Hill County 102 Tex. 335, 116 S.W. 359 (1909); Commissioners Court of Henderson County v. Burke, 262 S.W. 94 (Civ.App. 1924); Carroll v. Williams, 109 Tex. 155, 202 S.W. 504 (1918); First State Bank & Trust Co. of Rio Grande City v. Starr County, 306 S.W.2d 246 (Civ.App. 1957). This rule prevails even though the commissioners, in levying a tax to establish a General Fund, took into consideration the fact that they were acquiring more money than would be actually needed with the intent to transfer the additional money to another fund.

You second question again states:

"Can funds to enlarge and equip an existing County Hospital come out of the general fund, it being provided for by the Commissionners Court at the time of fixing the budget, or must these funds come out of the Permanent Improvement Fund?"

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It was held in Attorney General's Opinion V-518 (1948), that where the establishment of a county hospital was from current funds, the cost of the purchase would come from the Permanent Improvement Fund and the costs of the operation and maintenance from the General Fund.

Attorney General's Opinion V-701 (1948) held that the construction of sidewalks, necessary entrances and exits, driveways and landscaping of a county hospital may be paid for out of the Permanent Improvement Fund of the county. Likewise, it was held in Attorney General's Opinion O-6441 (1945) that the cost of painting an office in the courthouse, where there is no new construction, is chargeable against the Permanent Improvement Fund.

In view of the foregoing, it is our opinion that the enlargement of a county hospital should be paid for out of the Permanent Improvement Fund of the county. However, the equipping of a hospital is different from enlarging same. It was held in Attorney General's Opinion O-6531 (1945) that the permanent records for the county clerk, district clerk and tax assessor-collector cannot be paid for out of the Permanent Improvement Fund. The meaning of "equip" has been held to be synonymous with "furnish." See Words and Phrases, Vol. 14A, p. 359. Therefore, the equipping of an enlarged portion of a county hospital should be paid for out of the General Fund of the County.

SUMMARY

Funds may not be transferred from the General Fund to the Permanent Improvement Fund (Carroll v. Williams, 109 Tex. 155, 202 S.W. 504, 1918); the enlarging of a county hospital should be paid for out of the Permanent Improvement Fund while the equipping of same should be paid out of the General Fund of the County.

Yours very truly,

WILL WILSON
Attorney General of Texas

By


James M. Farris
Assistant

JMF:mfh

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APPROVED:

OPINION COMMITTEE
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Paul R. Floyd, Jr.
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REVIEWED FOR THE ATTORNEY GENERAL
BY: W. V. Geppert