



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 24, 1959

Honorable Charles L. Reynolds
County Attorney
Childress County
Childress, Texas

Opinion No. WW-745

Re: Who determines adequacy of transportation and whether a Commissioners' Court may compensate a Sheriff under Subsection (c) when transportation is furnished under Subsection (a) of Article 6877-1, Vernon's Civil Statutes.

Dear Mr. Reynolds:

We quote from your recent letter:

"Childress County, Texas, is a county whose officers are compensated on a salary basis. The county owns two automobiles that are used exclusively by the Sheriff and his deputies and all expenses incidental to the upkeep and operation of both automobiles are paid for solely by the county under the provisions of Subsection (a) of Article 6877-1, Vernon's Texas Civil Statutes. Recently, one of the two automobiles was being repaired and was out of service, during which time the Sheriff used his personal automobile for official business. The other county owned automobile was available and was used for official county business during that period of time. The Sheriff has submitted his sworn statement of claim against the county for reimbursement of transportation expenses incurred in the use of his personally owned automobile for official county business during this period of time. The Commissioners' Court was not apprised of the transportation situation until the

Sheriff's claim was submitted to it, and naturally had taken no action with respect to either authorizing or denying the use of the Sheriff's personally owned automobile for official county business, and the Court is of the opinion that during the period of time in question there was no emergency requiring the use of any transportation other than the county owned automobile available for use.

"Action by the Commissioners' Court on the claim is being held pending your formal opinion as to:

"1. Who shall determine what is adequate transportation?

"2. Is it mandatory that the Commissioners' Court pay this claim?

"3. May the court in its discretion allow the claim?

"4. Is the Court prohibited from approving the claim?"

Article 6877-1, Vernon's Civil Statutes, provides in part as follows:

"The County Commissioners Courts of this State are directed to supply and pay for transportation of sheriffs of their respective counties and their deputies to and from points within this State, under one of the four (4) following sections:

"(a) Such sheriffs and their deputies shall be furnished adequate motor transportation including all expense incidental to the upkeep and operation of such motor vehicles.

"(b) Motor vehicles shall be furnished to such sheriffs and their deputies who may furnish gas and oil, wash and grease, incidental to the operation of such vehicles; for which gas and oil, wash and grease, such sheriffs and deputies shall be compensated at a rate not to exceed four

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cents (4¢) per mile for each mile such vehicle is operated in the performance of the duties of his office.

"(c) Alternatively such County Commissioners' Courts may allow sheriffs and their deputies in their respective counties to use and operate cars on official business which cars are personally owned by them for which such officers shall be paid not less than six cents (6¢) per mile nor more than ten cents (10¢) per mile for each mile traveled in the performance of official duties of their office."

In answer to your first question, it is for the Commissioners' Court to determine what is "adequate motor transportation" within the meaning of Subsection (a) of the above statute. The Commissioners' Court is given the statutory duty to provide such transportation. Implied authority exists in the Commissioners' Courts to do what may be necessary to exercise the duties and powers conferred upon them. Anderson v. Wood, 137 Tex. 201, 152 S.W. 2d 1084 (1941); Canales v. Laughlin, 147 Tex. 169, 214 S.W. 2d 451 (1948). Manifestly the Commissioners' Court must determine what "adequate motor transportation" is if the Court is to furnish such transportation.

Moreover, Section 18 of Article V of the Constitution of Texas confers on Commissioners' Courts powers and jurisdiction over "county business." The subject determination clearly falls within the purview of "county business."

However, such determinations are subject to judicial review by the District Court in a proper suit for such purpose. Article V, Section 8, Texas Constitution; Article 1908, Vernon's Civil Statutes; Harris County v. Bassett, 139 S.W. 2d 180 (Civ. App. 1940, error ref.).

In answer to your second question, it is not mandatory that the Commissioners' Court pay the claim in question unless the Commissioners Court finds that it has not supplied "adequate transportation" in the situation described in your letter and elects to use Subsection (c) of the statute.

We have previously held that the Commissioners' Court may not legally supply and pay for transportation of the

sheriff and his deputies under more than one of the three subsections of the statute at a time. WW-707 (1959); V-293 (1947). Therefore, if the Commissioners' Court is already supplying "adequate motor transportation" under Subsection (a) it cannot allow the claim in question. If, however, the Commissioners' Court makes a valid determination that the Court is not furnishing "adequate motor transportation" when one of the two county owned automobiles is available for use by the sheriff and the other automobile is not, then the Commissioners' Court could, and would even have to, supply and pay for transportation of the sheriff and his deputies under either Subsection (b) or (c) of the statute. The Commissioners' Court has a mandatory duty to supply and pay for such transportation under at least one of the three Subsections. V-293 (1947).

The question of whether the sheriff and his deputies have had adequate motor transportation involves a factual determination which must be made by the Commissioners' Court in the light of many varied factors that are peculiar to the local situation. Of such factors the Commissioners' Court is cognizant and this department is not.

Based upon the statement in your letter that the "court is of the opinion that during the period of time in question there was no emergency requiring the use of any transportation other than the county owned automobile available for use," we infer that the court has found that "adequate motor transportation" has been furnished to the sheriff. Assuming that such determination is valid in light of the facts and circumstances present in Childress County, your third question is, therefore, answered in the negative and your fourth in the affirmative.

SUMMARY

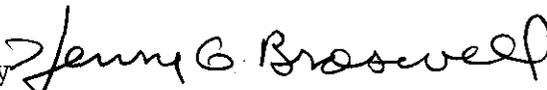
Commissioners' Courts determine what is "adequate motor transportation" within the meaning of Subsection (a) of Article 6877-1, Vernon's Civil Statutes, subject to judicial review in a proper case. A claim made under

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Subsection (c) of the Statute cannot be approved by the Commissioners' Court when adequate motor transportation is being furnished under Subsection (a).

Very truly yours,

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By 
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HB:me:ms

APPROVED:

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