



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 29, 1961

Honorable Charles A. Allen
Criminal District Attorney
Harrison County
P. O. Box 949
Marshall, Texas

Opinion No. WW-1029

Re: Whether, under the mandatory provisions of the Harrison County Road Law, the Commissioners' Court of Harrison County, Texas, is required to employ and have in its constant employ a "registered professional" civil engineer?

Dear Mr. Allen:

In your letter of March 7, 1961, you request the opinion of this office on the following question:

"Under the mandatory provisions of the Harrison County Road Law is the Commissioners' Court of Harrison County, Texas required to employ and have in its constant employ a 'registered professional' civil engineer?"

In Opinion No. V-1407, to which we adhere, this office expressed the opinion that:

"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."

Section 4 of House Bill No. 812, Acts 42nd Leg., Special Laws, R.S. 1931, ch. 156, p. 303 requires that "Said County Engineer shall be a qualified Civil Engineer and a resident of the State of Texas;" The question thus evolves: Must the "qualified Civil Engineer" required by Section 4 be a "registered professional" civil engineer?

The duties of the county engineer are set forth in Sections 2, 3 and 4 of the Harrison County Road Law, providing in part as follows:

"Sec. 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. . . .

"Sec. 4. Said County Engineer shall be a qualified Civil Engineer and a resident of the State of Texas; . . . 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)

The pertinent sections of Article 3271a, Vernon's Civil Statutes, defining and regulating the practice of professional engineering in the State of Texas, provide in part:

"Section 1. That in order to safeguard life, health, and property, any person practicing or offering to practice the profession

of engineering as hereinafter defined shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice the profession of engineering in this State, . . . unless such person has been duly registered or exempted under the provisions of this Act.

"DEFINITIONS

"Sec. 2. The term professional engineer as used in this Act shall mean a person who, by reason of his knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as hereinafter defined.

"The practice of professional engineering within the meaning and intent of this Act includes any professional service, such as consultation, investigation, evaluation, planning, designing, or responsible supervision of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, wherein the public welfare, or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of engineering principles and interpretation of engineering data.

". . .

"Sec. 19. After the first day of January, 1938, it shall be unlawful for this State, or for any of its political subdivisions, for any county, city, or town, to engage in the construction of any public work involving professional engineering, where public health, public welfare or public safety is involved, unless the engineering plans and specifications and estimates have been prepared by,

and the engineering construction is to be executed under the direct supervision of a registered professional engineer; provided, that nothing in this Act shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed Three Thousand (\$3,000.00) Dollars. Provided, that this Act shall not apply to any road maintenance or betterment work undertaken by the County Commissioners' Court."
(Emphasis added throughout)

The term, "public works" is defined in Volume 34 of Texas Jurisprudence at page 731, as embracing "all constructions and improvements--ordinarily of a fixed nature--designed for public use, protection or enjoyment. Clearly included among public works are bridges, school buildings, waterworks, dams, sewers, canals and channels, levees and seawalls, wharves and piers, irrigation, reclamation and drainage projects, and highways and streets. Indeed, every work undertaken by the State, a county, municipality, or other public agency is necessarily, in the broadest sense, a 'public work.'" The term "public welfare" is defined as "the prosperity, well-being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class." Black's Law Dictionary.

It is the opinion of this office that the duties imposed upon the county engineer by the Harrison County Road Law are encompassed by the definition of the practice of professional engineering contained in Section 2 of Article 3271a.

In response to a request from the County Auditor of Harrison County, relative to the authority of the Commissioners Court to appoint a person not possessing the qualifications of a "professional engineer" as a superintendent of maintenance and construction of county roads and other public works, this office expressed the following opinion:

"It is the opinion of this department, under the facts stated, that Section 19, supra, does not prohibit the Commissioners' Court from appointing a person not possessing the qualifications of an engineer as

defined in Article 3271a, V. A. C. S., as a superintendent in the construction of public works where the contemplated expenditure for the completed project does not exceed \$3,000.00; nor does said section prohibit the Commissioners' Court from appointing such a person to supervise any road maintenance or road betterment work undertaken by the county Commissioners' Court.

"Where, however, the county Commissioners' Court engages in the construction of public works wherein the contemplated expenditure for the completed project exceeds \$3,000.00, and such work involves public health, public welfare or public safety, and also involves professional engineering, it is the opinion of this department that, while a non-engineer could be appointed as general supervisor of such construction, Section 19 requires the county to employ a registered professional engineer to prepare the engineering plans and specifications and estimates, and the engineering construction, likewise, must be executed under the direct supervision of such engineer.

"Whether the construction of a particular public work involves 'professional engineering' and whether 'public health, public welfare or public safety' is involved, are questions of fact, and consequently not subject to being ruled on by this department."

Copies of this opinion, No. O-3505, and of Opinion No. V-1407 are enclosed for your information.

S U M M A R Y

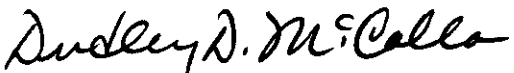
Under the mandatory provisions of the Harrison County Road Law and the provisions of Article 3271a, Vernon's Civil

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Statutes, the Commissioners Court of Harrison County, Texas, is required to employ and have in its constant employ a "registered professional" civil engineer.

Very truly yours,

WILL WILSON
Attorney General of Texas

By 
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Assistant

DDM:hmc

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL

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