



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

April 23, 1963

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

Opinion No. C- 63

Re: Whether the Commissioners  
Court has authorization  
to establish an industrial  
oil and gas and public  
utilities appraisal depart-  
ment.

Dear Mr. Damiani:

In your request for an opinion from this office, you  
submit certain facts which we quote as follows:

"The Galveston County Tax Assessor and  
Collector recently requested the Commissioners  
Court for the County of Galveston to enter in-  
to a contract with an appraisal firm to assist  
him in the appraisal and assessment of oil and  
gas, public utilities and industrial properties.  
The Commissioners Court declined to enter into  
any contract with an appraisal firm and on March  
19, 1963, at a regular meeting of the Commissioners  
Court the Commissioners Court voted to set up an  
industrial oil and gas and public utilities ap-  
praisal department under the supervision of the  
County Commissioners Court to assist the Board  
of Equalization and to work with the County Tax  
Assessor and Collector's office.

"After the creation of this particular  
department, the Court voted to hire an engineer  
to head this particular department at an annual  
salary of \$13,500.00. This engineer is not res-  
ponsible to the Tax Assessor and Collector and  
is not a tax office employee or deputy. . . .

"It is understood that the hiring of this  
particular engineer will in no way usurp the  
authority of the Tax Assessor and Collector who

has the specific duty to assess all properties. . ."

With regard to these facts you ask two questions which we list as follows:

"Whether the Commissioners Court has authorization to establish an industrial oil and gas and public utilities appraisal department.

"Whether the Commissioners Court is authorized to hire an engineer for the appraisal of industrial oil and gas and public utilities properties as an aid to the Commissioners Court sitting as a Board of Equalization."

Under Section 18 of Article V of the Texas Constitution, Commissioners' Courts are courts of limited jurisdiction, having no authority except as is expressly or impliedly conferred. Von-Rosenberg v. Lovett, 173 S.W. 508 (Civ.App. 1915); Miller v. Brown, 216 S.W. 452 (Civ.App. 1919) and Carroll v. Williams, 109 Tex. 155, 202 S.W. 504 (1918). Also the authority to create such a department is not conferred by the terms of Article 2351, Vernon's Civil Statutes, which specifies the general powers and duties of Commissioners' Courts.

Since the Commissioners' Court has no express authority to establish an industrial oil and gas and public utilities appraisal department, it cannot rely on its implied power for authorizing the creation of this department. In Canales v. Laughlin, 147 Tex. 169, 214 S.W.2d 451 (1948), the Supreme Court stated:

"The Constitution does not confer on the commissioners courts 'general authority over the county business' and such courts can exercise only such powers as the Constitution itself or the statutes have 'specifically conferred upon them.' . . . While the commissioners courts have a broad discretion in exercising powers expressly conferred on them, nevertheless the legal basis for any action by any such court must be ultimately found in the Constitution or the statutes."

For other cases denying the use of implied powers in absence of a statute, see Lasater v. Lopez, 110 Tex. 179, 217 S.W.

373 (1919); Moon v. Alred, 277 S.W. 787 (Civ.App. 1925, error dismissed w.o.j.); Hill v. Sterrett, 252 S.W.2d 766 (Civ.App. 1952, error ref. n.r.e.).

Attorney General's Opinion O-4557 (1942) held that in the absence of express or implied authority, the Commissioners' Court of Tarrant County could not legally employ a Board of Equalization composed of skilled experts to value for taxation purposes property in the county. Consequently, in the absence of express constitutional or statutory authority, we must hold the act of the Commissioners' Court in establishing an industrial oil and gas and public utilities appraisal department, headed by an engineer not responsible to the Tax Assessor and Collector, is ultra vires and void.

Section 18 of Article V of the Texas Constitution provides in part as follows:

"Each County shall. . .be divided into four commissioners' precincts in each of which there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for four years. . .The county commissioners so chosen with the County Judge, as presiding officer, shall compose the County Commissioners Court. . ."

Section 18, Article VIII of the Texas Constitution, provides as follows:

"The Legislature shall provide for equalizing as near as may be, the valuation of all property subject to or rendered for taxation, (the County Commissioner's Court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties."

The Texas Constitution also provides that "Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law." Section 1, Article VIII.

Also the statutory law places upon the Commissioners' Court sitting as the County Equalization Board a heavy responsibility. Section 1 of Article 7206 of Vernon's Civil Statutes, provides as follows:

"They shall cause the assessor to bring before them at such meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same."

Article 7212 of Vernon's Civil Statutes, states in part:

"The boards of equalization shall have power, and it is made their official duty, to supervise the assessment of their respective counties, and, if satisfied that the valuation of any property is not in accordance with the laws of the State, to increase or diminish the same and to affix a proper valuation thereto, as provided for in the preceding article; and, when any assessor in this State shall have furnished said court with the rendition as provided for in the preceding article, it shall be the duty of such court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality and quantity of such property, as well as the value thereof. Said court, after hearing the evidence shall fix the value of such property in accordance with the evidence so introduced and as provided for in the preceding article; and their action in such case or cases shall be final; . . ."

It has been definitely decided by our courts, however, that the Commissioners' Court has the implied power to employ independent assistants to assist in arriving at the value to be fixed by the Commissioners' Court as a Board of Equalization where technical or special knowledge is necessary and which knowledge the Commissioners' Court would not be presumed to possess, such for example as oil property or any other type of property in which skilled or technical knowledge is necessary in order to attain a fair valuation. One of the first cases to consider the authority of the Commissioners' Court to employ outside help in valuating property is Roper v. Hall, 280 S.W. 289 (Tex.Civ.App. 1926), in which the court held that the Commissioners' Court of

Freestone County had authority to make a contract with a private individual to list owners of all producing oil and gas properties within the county and make a valuation of all pipelines, refineries, tank farms, tankage, etc., used in connection with oil and gas development including transportation facilities. The court based its decision upon the premise that the value of the particular kind of property involved could not have been determined by one who possessed only ordinary knowledge as to such property and hence the court had the implied authority to secure the services of an expert as to the value of such property. The court was careful to point out, however, that the contract precluded the possibility that the expert would perform any of the duties imposed by law on the Tax Assessor-Collector or the Board of Equalization, stating that the purpose of the contract was merely to aid such officers in the performance of their duties. The next case in which the court had occasion to consider the power vested in a taxing authority to employ assistants in arriving at fair appraisals is Simkins v. City of Corsicana, 86 S.W.2d 792 (Tex.Civ.App. 1935). In this case the court said:

"We know of no valid reason why a tax board cannot employ an expert to assist it in arriving at the true value of taxable property, and when such expert has been employed the board should have a right to take into consideration the information so furnished by him in ascertaining the true value of property for tax purposes. . . . But it must be remembered that such experts so employed bear no official relationship to the property owner and have no statutory authority to fix the value at which the property is to be assessed. . . ."

The same problem was later presented and ruled upon in the case of Marquart v. Harris County, 117 S.W.2d 494 (Tex.Civ. App. 1938, error dismissed), and the contract considered in that case was condemned by the court because of its broad application to all of the taxable property in the county and, in effect, superseded the statutory powers of the Tax Assessor-Collector. The case followed, however, the previous decisions that contracts of employment of experts to aid in valuing certain types of property were legal and constituted an appropriate expenditure of public funds.

Another case to consider this problem is Crosby v. P. L. Marquess and Co., 226 S.W.2d 461 (Tex.Civ.App. 1950, error

ref. n.r.e.), which case upholds the validity of an appraisal and valuation contract which had been entered into by the trustees of the Kuntz Independent School District and P. L. Marquess and Company. This case went further than any prior case in upholding the validity of a contract to appraise property in behalf of a taxing district. The most recent case concerned with this problem is Pritchard and Abbott, et al. v. McKenna, 162 Tex. 617, 350 S.W.2d 333 (1961). In this case the Supreme Court reversed the First Court of Civil Appeals, and following the reasoning of Roper v. Hall, 280 S.W. 289 (Civ.App. 1926); Federal Royalty Co. v. State, 42 S.W.2d 670 (Civ.App. 1931), and Whelan v. State, 155 Tex. 14, 282 S.W.2d 378 (1955), held that "while the Commissioners' Court is not expressly clothed with constitutional or statutory authority to contract with a private firm for the appraisal of all property in the county, that authority is implied from the powers that have been expressly granted to and the duties imposed upon that body by law." (Emphasis added).

On the basis of the foregoing authorities, you are advised that the Commissioners' Court is authorized to hire an engineer for the appraisal of industrial oil and gas and public utilities properties as an aid to the Commissioners' Court sitting as a Board of Equalization.

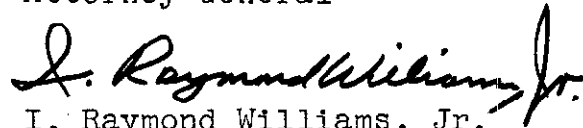
S U M M A R Y

The Commissioners' Court does not have the express or implied authority to establish an independent industrial oil and gas and public utilities appraisal department. However, the Commissioners' Court is authorized to hire an engineer for the appraisal of industrial oil and gas and public utilities properties as an aid to the Commissioners' Court sitting as a Board of Equalization.

Sincerely,

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Attorney General

By:

  
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Assistant

IRW:mkh

Hon. Jules Damiani, Jr., page 7 (C- 63 )

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