The Attorney General of Texas

December 31, 1984

Honorable Margaret Moore
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767

Opinion No. JM-295

Re: Whether a commissioners court may create a road district which has two or more noncontiguous segments

Dear Ms. Moore:

You have asked the following questions concerning road districts:

1. Can the commissioners court, pursuant to the discretion granted by section 4.413 of the County Road and Bridge Act, create a road district which has two or more noncontiguous segments providing the interests and purposes of the noncontiguous segments are the same; and

2. If it is clearly stated in the bond election proposition submitted to the voters and is clearly for legitimate needs and purposes of the road district, may bond funds be spent on roads needed for ingress and egress to the area encompassed by the road district?

We conclude that the law does not authorize the creation of road districts composed of noncontiguous tracts of land. It is our opinion that proceeds of bonds issued by a road district may be used for ingress and egress road improvements outside the boundaries of the district if the commissioners court has determined that such improvements will benefit all taxable property of the district and the bond election proposition submitted to the voters clearly specifies that the bond proceeds will be used for such road improvements.

Article III, section 52(b) of the Texas Constitution authorizes the establishment of road districts. It provides, in pertinent part:

(b) Under Legislative provision, any county, and political subdivision of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not
include, towns, villages or municipal corporations, upon a vote of two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes to wit:

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(3) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. (Emphasis added).

The County Road and Bridge Act, as recently re-enacted by Senate Bill No. 24, Sixty-eighth Legislature, 2nd Called Session, contains the provisions enacted by the legislature for the establishment of road districts and the issuance of road district bonds. That act, codified as article 6702-1, V.T.C.S., provides the following, in pertinent part:

Section 4.413. ESTABLISHMENT OF ROAD DISTRICTS. (a) The county commissioners courts may establish one or more road districts in their respective counties and may or may not include within the boundaries and limits of the districts villages, towns, and municipal corporations or any portion of a village, town, and municipal corporation and may or may not include previously created road districts and political subdivisions or precincts that have voted and issued road bonds pursuant to Article III, Section 52, of the Texas Constitution, by entering an order declaring the road district established and defining the boundaries of it.

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Section 4.416. PETITION FOR ELECTIONS. (a) If any political subdivision or any road district desires to issue bonds, there shall be presented
to the commissioners court of the county in which
the subdivision or district is situated, a peti-
tion signed by 50 or a majority of the qualified
voters of the subdivision or road district praying
the court to order an election to determine
whether or not the bonds of the subdivision or
district shall be issued to an amount stated for
the purpose of the construction, maintenance, and
operation of macadamized, graveled, or paved roads
and turnpikes or in aid of these purposes and
whether taxes shall be levied on all taxable
property within the subdivision or district in
payment of the bonds.

(b) On presentation of the petition, the court
to which it is presented shall fix a time and
place at which the petition shall be heard . . . .

Section 4.417. HEARING AND DETERMINATION. At
the time and place set for the hearing of
the petition or a subsequent date as may then be
fixed, the court shall proceed to hear the
petition and all matters in respect of the
proposed bond election . . . . If on the hearing
of the petition the court finds that the petition
is signed by 50 or a majority of the qualified
voters of the subdivision or road district, that
due notice has been given, and that the proposed
improvements would be for the benefit of all
taxable property situated in the subdivision or
road district, the court may issue and cause to be
entered of record in its minutes an order
directing that an election be held within and for
the subdivision or road district at a date to be
fixed in the order for the purpose of determining
the questions mentioned in the petitions . . . .
The proposition to be submitted at the election
shall specify the purpose for which the bonds are
to be issued, the amount of the bonds, the rate of
interest, and the fact that ad valorem taxes are
to be levied annually on all taxable property
within the district or subdivision sufficient to
pay the annual interest and provide a sinking fund
to pay the bonds at maturity. (Emphasis added).

The creation of a road district and the determination of its
boundaries are matters within the discretion of the commissioners
court. See King v. Falls County, 42 S.W.2d 481 (Tex. Civ. App. - Waco
1931, no writ); Attorney General Opinion V-440 (1947). However, the
constitution and the statutes do not expressly specify whether the
defined boundaries of a road district may encompass an area that is territorially noncontiguous.

We believe that the usual concept of a district contemplates an area with a single set of boundaries rather than a collection of geographically isolated tracts. See Jones v. Palcey, 222 A.2d 101, 106 (N.J. Sup. Ct. 1966). The Wisconsin Supreme Court held that

"[t]here is much force in the general and almost invariable usage, in this country at least, in the organization of towns and counties, as in precincts, districts, cities, and villages, in forming them of adjacent and contiguous territory."

C. & N.W. Railway Co. v. Town of Oconto, 6 N.W. 607, 609 (Wis. 1880). Black's Law Dictionary defines a district as

one of the territorial areas into which an entire state or country, county, municipality, or other political subdivision is divided for judicial, political, electoral, or administrative purposes.


"Defined districts," as that term is used in article III, section 52(b) of the constitution, "means a defined area in a county, less than the county, other than a political subdivision of such county." (Emphasis added). Bell County v. Hines, 219 S.W. 556 (Tex. Civ. App. - Austin 1920, writ ref'd). We believe that the court's definition, which refers to "a defined area" and not to "defined areas," does not include tracts that are not contiguous to each other. Another court of civil appeals, in Gumfory v. Hanesford County Commissioners Court, 561 S.W.2d 28 (Tex. Civ. App. - Amarillo 1977, writ ref'd n.r.e.), held that the phrase "commissioners precincts," as used in the constitutional provision that a county is to be divided into four commissioners precincts, means that such precincts must be territorially contiguous.

The legislature expressly clarified that certain special districts created pursuant to article XVI, section 59 of the Texas Constitution may be composed of noncontiguous tracts. For instance, section 78.013(a) of the Texas Agriculture Code provides that a Noxious Weed Control District may include a body of land separated from the rest of the district. Likewise, sections 51.012(b) and 54.013(b) of the Texas Water Code specify that land composing a water control and improvement district created under chapter 51 or a municipal utility district created under chapter 54 need not be contiguous, but may consist of separate bodies of land separated by land which is not included in the district. Also, certain special law districts created pursuant to article XVI, section 59 by special acts of the legislature are composed of noncontiguous tracts. The
legislature created Spring Hill Utility District by chapter 750, acts
of the Sixty-first Legislature, as a district consisting of one large
tract of land and two smaller tracts located approximately six miles
from the main tract. See City of Longview v. Spring Hill Utility
District, 657 S.W.2d 430 (Tex. 1983).

We conclude that if the legislature had also intended that road
districts may be composed of separate, noncontiguous tracts it would
have expressly so provided in the County Road and Bridge Act.

In addition to the requirements that the commissioners court
conduct a hearing of a petition to order a bond election and make a
finding that the proposed improvements will benefit all taxable
property in the district, the Road and Bridge Act requires that the
proposition to be submitted at the election shall specify the purpose
for which the bonds will be issued. It is well settled that the
proceeds of a bond issue may be used only for those roads which the
election proceedings specified would be built. See Fletcher v.
Howard, 39 S.W.2d 32 (Tex. 1931); Aransas County v. Coleman-Fulton
Pasture Co., 191 S.W. 553, 554 (Tex. 1917). Use of the proceeds from
the sale of road district bonds for an unapproved purpose would
constitute a fraud on the electorate. See Crowell v. Cammack, 40

The Road and Bridge Act expressly provides that the proceeds of a
bond issue may be used only for improvements that will benefit all
taxable property in the district. It contains no express provisions
determining the location of the improvements or whether the areas in
which bond proceeds may be expended shall be within or without the
boundaries of the road district. Since the thrust of the statute is
the requirement that the improvements benefit all taxable property in
the district, we believe that the statute does not prohibit per se all
expenditures of bond funds for improvements located outside the
district when the improvements are beneficial to all taxable property

Attorney General Opinion O-3851 (1941) concluded that where a
road was to be built on the dividing line between two road districts,
the proceeds from road district bonds of one district could be used to
construct only the part of the road located within that road district.
The opinion appears to base its conclusion on the fact that funds
derived from the sale of bonds cannot be diverted from the purpose
stated in the proposition submitted to the voters. We agree with such
a conclusion. However, assuming that the bond election proceedings
and proposition submitted to the voters specify that the bond funds
will be used for roads needed for ingress and egress to the area
encompassed by the road district, we conclude that proceeds from
the issuance of bonds may be used for improvements outside the boundaries
of the road district if the commissioners court has found that such
improvements will benefit all taxable property in the district.
SUMMARY

A commissioners court is not authorized to establish a road district composed of noncontiguous tracts of land. If the bond election proposition submitted to the voters clearly specifies that the bond funds will be used for roads needed for ingress and egress to the area encompassed in the district, bond funds may be used for improvements outside the district which benefit all taxable property in the district.

Very truly yours,

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