



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

April 9, 1964

Honorable D. C. Greer
State Highway Engineer
Texas Highway Department
Austin, Texas 78701

Opinion No. C-240

Re: Authority of Highway
Department to build
entrance and exit ramps
and access roads to the
Texas Turnpike.

Dear Mr. Greer:

As outlined in information furnished this office on March 17th, by Mr. H. D. DeBerry, Jr., Staff Services Officer of your office, it is proposed:

- "1. That the City Fort Worth pay \$1,870,840.02 to the Turnpike Authority to replace revenue that would be lost if the dime ride to Meadowbrook were discontinued. (This amount was computed on the basis that net revenue at the Meadowbrook ramp in 1962 was \$140,148, and that if such charge remained at that rate until 1980, at which time the Turnpike Authority expects to retire all of its bonds, its calculated value for the 17 years would be \$1,870,840.22.)
- "2. That the City pay \$56,125.20 as redemption charge for Turnpike Authority bonds which would have to be recalled at a price higher than par. This amount would be \$101 per bond, with the Turnpike Authority using the \$1,870,840.02 payment to retire bonds.
- "3. That the Turnpike Authority would build two more lanes in the center of the Turnpike, between Oakland and the Mixmaster, at a cost of \$596,000 which would be paid by the City.
- "4. That the Turnpike Authority would construct westbound ramps at Oakland at a cost of \$137,000, which amount would be paid by the City.

"5. Construction of the east and westbound ramps at Beach Street was discussed, although this project was not a part of the proposal as submitted by Mr. Purnell. In the discussion, it was the consensus that such construction should be undertaken at the same time that the other work is done. It was pointed out that the Turnpike Authority agreed in the past that when such ramps were needed it would build eastbound ramps and the City would have the responsibility for building the westbound ramps. Estimated cost of ramp construction for both directions was stated to be \$266,000 by Mr. Davis."

In a letter dated March 31st, 1964, to the Texas Highway Commission by Jack Butler, Chairman, Town Hall East Side Access Committee, it is stated:

"About eight months ago Mayor Bayard Friedman named a committee to negotiate with the Turnpike Authority to seek an agreement for use of a portion of the turnpike. Authority Chairman Clyde Ashworth in turn named a committee. These two groups have worked in great harmony to come up with a plan, and we believe we have a workable plan. This plan is still subject to approval by the representatives of the bond holders for the Turnpike, but there has been indication that this approval will be forthcoming.

"The plan envisions opening the Turnpike from the downtown Mixmaster in Fort Worth east to Oakland Blvd. Ingress and egress would be provided at Oakland and at Beach Street.

"In order to handle the increased flow of traffic expected, it would be necessary to build a lane in each direction from downtown to the Oakland exit.

"At the present time, there is an income of about \$140,000 annually to the Turnpike from a 10-cent toll over this same stretch of road. Naturally the agreement would entail payment

for the entrance and exit ramps, the two lanes and the right-of-way easement over the already constructed turnpike which would at the same time at least partially indemnify the Turnpike for the revenue loss.

"Total cost of this agreement would be an estimated \$2,792,965.22. Of this sum, construction of the new facilities would cost:

Two additional lanes	\$596,000.00
Oakland ramps	137,000.00
Beach ramps	133,000.00
	<u>\$866,000.00</u>

"The city of Fort Worth has pledged \$1,200,000.00 from its bond funds to help pay the overall cost.

"The County of Tarrant has voted to spend \$800,000.00 in helping acquire the right-of-way or easement, provided the State will appropriate a like amount for construction.

"All of these figures are based on the approximate cost with final estimates pending. However, we believe them to be accurate estimates.

"Our petition to you is that the Texas Highway Commission agree to pay \$800,000 toward the construction of the facilities needed to open this fine road for our East Side residents."

In view of the foregoing background you have asked this office the following question:

"Will you please furnish us with an official opinion as to whether or not the Highway Department has authority to expend highway funds for construction of such improvements on Turnpike right of way over which an easement for public use might be granted by the Texas Turnpike Authority between specified points of access on the Dallas-Fort Worth Turnpike."

The Texas Turnpike Authority was created by the provisions of Article 6674v, Vernon's Civil Statutes. Subdivision (1) of Section 5 of Article 6674v provides:

"To designate the location, and establish, limit and control such points of ingress to and egress from, each Turnpike Project as may be necessary or desirable in the judgment of the Authority and the Texas Highway Department to insure the proper operation and maintenance of such Project, and to prohibit entrance to such Project from any point or points not so designated.

"In all cases where county or other public roads are affected or severed, the Authority is hereby empowered and required to move and replace the same, with equal or better facilities; and all expenses and resulting damages, if any, shall be paid by the Authority."

Section 12 of Article 6674v provides in part as follows:

"The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each Turnpike Project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portions, for placing thereon gas stations, garages, stores, hotels, restaurants, or for any other purpose except for tracks for railroad or railway use, and except for use by telephone, telegraph, electric light or power lines and to fix the terms, conditions, rents and rates of charges for such use. . . ."

In view of the foregoing provisions, it is apparent that the Texas Turnpike Authority has the authority to contract with the City of Fort Worth and County of Tarrant, and other interested agencies, for "use" of the Turnpike right-of-way, and to fix the terms, conditions, rents and rates of charges for such use.

Also, it is noted that Section 19 of Article 6674v provides that the Turnpike Project shall become a part of the State Highway System when the bonds and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and

the interest thereon to the maturity thereof or for the redemption thereof shall have been set aside in trust for the benefit of the bondholders.

Article 6673b, Vernon's Civil Statutes, provides:

"The State Highway Commission is hereby authorized and empowered, in its discretion, to enter into contracts or agreements with the governing bodies of incorporated cities, towns, and villages, whether incorporated under the home rule provisions of the Constitution, Special Charter, or under the General Laws, providing for the location, relocation, construction, reconstruction, maintenance, control, supervision, and regulation of designated State highways within or through the corporate limits of such incorporated cities, towns, and villages, and determining and fixing the respective liabilities or responsibilities of the parties resulting therefrom; and such incorporated cities, towns, and villages are hereby authorized and empowered, through the governing bodies of such cities, towns, and villages to enter into such contracts or agreements with the State Highway Commission."

Under the proposal outlined above, the Texas Turnpike Authority will receive compensation for use of the turnpike.

The City of Fort Worth, County of Tarrant and State Highway Department will acquire right-of-way easements necessary to facilitate ingress and egress to the turnpike. Therefore, each agency under the proposed agreement will be carrying out duties authorized by law. In view of the foregoing, you are advised that the Highway Department may expend highway funds for the construction of such improvements as may be necessary to carry out the proposal to provide ingress and egress to the Texas Turnpike, as outlined in this opinion.

SUMMARY

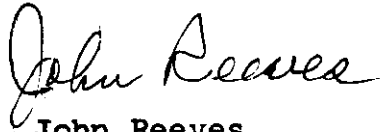
The Texas Highway Department has authority to expend highway funds for the construction of such improvements as may be necessary to provide ingress and egress

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to the Dallas-Fort Worth Turnpike under the proposed agreement between the City of Fort Worth, County of Tarrant, Texas Turnpike Authority and the Texas Highway Department.

Yours very truly,

WAGGONER CARR
Attorney General

By 
John Reeves
Assistant

JR:ms

APPROVED

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
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