



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTON
ATTORNEY GENERAL**

April 12, 1988

Honorable Mark W. Stiles
Chairman
County Affairs Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-88-40

Dear Representative Stiles:

Thank you for your letter dated March 4, 1988, concerning the payment of a bill for towing a county-owned bulldozer. We understand that a county commissioner used his company's equipment to extract a county-owned bulldozer from a stream bed. The bulldozer was mired in mud, and the commissioner acted with the consent of two other commissioners under the threat of inclement weather. The equipment company then billed the county for the work, and the commissioners court is denying payment.

Section 81.002(a) of the Local Government Code provides:

(a) Before undertaking the duties of the county judge or a county commissioner, a person must take the official oath and swear in writing that the person will not be interested, directly or indirectly, in a contract with or claim against the county except:

(1) a contract or claim expressly authorized by law; or

(2) a warrant issued to the judge or commissioner as a fee of office. (Emphasis added.)

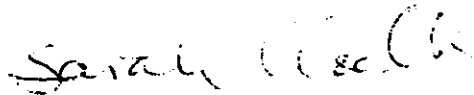
In 1934, the court of civil appeals heard an appeal in a case similar to the situation in Roberts County. In that case, a county commissioner had allowed his truck to be used for the benefit of the county. In holding that the

commissioner could not recover for the use of his truck, the court wrote:

Any claim on the part of such public official that rests upon any character of contract between himself and the county which he has sworn to serve, is obnoxious to sound public policy and ought never to be enforced.

Cornutt v. Clay County, 75 S.W.2d 299, at 300 (Tex. Civ. App. - Eastland 1934, no writ).¹ Therefore, even though the county commissioner may have acted in the best interest of the county, he has no right to demand payment.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/PR/ER

#3120

1. At the time Cornutt was decided, the provision governing the oath of a county commissioner was found at article 2340, V.T.C.S., and did not contain the exception for "a contract or claim expressly authorized by law." Local Gov't Code §81.002(a)(1). You do not suggest the possibility that the claim at issue was expressly authorized by law. Thus, we assume that the change in the law is not relevant to your question.