



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2022

The Honorable Dana Young
Cherokee County Attorney
Post Office Box 320
Rusk, Texas 75785

Opinion No. KP-0420

Re: Authority of a county to dispose of salvage property as salvage or waste under section 263.152 of the Local Government Code (RQ-0455-KP)

Dear Ms. Young:

You ask about the authority of a county to dispose of salvage property as salvage or waste under section 263.152 of the Local Government Code.¹ Specifically, your question concerns “the disposal of old culverts² which have been removed from real property, are no longer suitable to function as a culvert should, and have no value for the purpose for which the culverts were originally intended.” Request Letter at 1. You tell us that Cherokee County removes approximately one culvert per week and disposes of them as “salvage property” under section 263.152 of the Texas Local Government Code through competitive bidding or auction. *Id.*; see TEX. LOC. GOV’T CODE § 263.152(a)(1). But, you explain, “[t]here have been instances where the bids for the used culverts do not exceed the cost of placing the notice in the local paper.” Request Letter at 1. You ask whether “the old culverts meet the definition of ‘items routinely discarded as waste’ which can be disposed of through a recycling program.” *Id.*

Whether culverts are “routinely discarded as waste” by the county presents fact questions for the commissioners court to determine in the first instance and cannot be resolved in an attorney general opinion. See Tex. Att’y Gen. Op. No. DM-268 (1993) at 2 (stating that “the determination whether a particular item of property is truly of no use or resale value to the county would involve the resolution of factual issues and therefore is not amenable to the opinion process”). But we can provide guidance about a county’s legal authority to dispose of property generally.

Chapter 263, subchapter D of the Local Government Code governs county disposition of salvage or surplus property.³ See TEX. LOC. GOV’T CODE §§ 263.151–158. The subchapter

¹See Letter from Honorable Dana Young, Cherokee Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Apr. 21, 2022), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2022/RQ0455KP.pdf> (“Request Letter”).

²We assume you refer to the types of culverts commonly used in county road construction: “A culvert is a structure that allows water to flow under a road, railroad, trail or similar obstruction. Typically surrounded by soil, culverts may be made from pipe, reinforced concrete or other material.” TEX. DEPT. OF TRANSP., *TxDOT Visual Dictionary*, <https://www.txdot.gov/driver/txdot-visual-dictionary/culvert.html> (last visited June 13, 2022).

³The commissioners court may adopt rules necessary to administer chapter 263, subchapter D of the Local Government Code. TEX. LOC. GOV’T CODE § 263.158.

defines “salvage property” as “personal property, *other than items routinely discarded as waste*, that because of use, time, accident, or any other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended.” *Id.* § 263.151(1) (emphasis added). Similarly, the definition of “surplus property” excludes “items routinely discarded as waste.” *Id.* § 263.151(2)(A).

Section 263.152 authorizes a county to “periodically sell the county’s surplus or salvage property by competitive bid or auction.” *Id.* § 263.152(a)(1). When the commissioners court undertakes to sell property by competitive bid or auction, but “is unable to do so because no bids are made,” the commissioners court may “order any of the property to be destroyed or otherwise disposed of as worthless.” *Id.* § 263.152(a)(3). When that happens, disposal “may be accomplished through a recycling program under which the property is collected, separated, or processed and returned to use in the form of raw materials in the production of new products.” *Id.* § 263.152(c). Thus, section 263.152 authorizes disposal through recycling for salvage or surplus property, i.e., property not routinely discarded as waste, when the commissioners court attempted to sell the property by competitive bid or auction but received no bids. *Id.* §§ 263.151(1), .152(a)(1), (a)(3), (c).

But by authorizing recycling in specified circumstances, section 263.152 does not thereby preclude utilizing recycling programs in other circumstances. Chapter 263 does not govern the commissioners court’s authority to dispose of the county’s routinely discarded waste, and we find no statute expressly addressing a commissioners court’s general authority to dispose of the waste it regularly discards. A commissioners court possesses “only those powers expressly given by either the Texas Constitution or the Legislature,” but “[w]hen the Constitution or Legislature imposes an obligation on a commissioners court, that commissioners court also has the implied authority to exercise the power necessary to accomplish its assigned duty.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003). Texas law imposes several specific duties on a commissioners court relevant to your question. A commissioners court has as its primary function the administration of the county’s business affairs. *Id.* at 27. Commissioners courts possess general authority to construct, repair, and maintain public roads. *See Smith Cnty. v. Thornton*, 726 S.W.2d 2, 3 (Tex. 1986). They also possess certain duties and responsibilities with respect to landfills and other solid waste disposal in the county. *See* TEX. HEALTH & SAFETY CODE § 364.011(a) (stating that a commissioners court “may regulate solid waste collection, handling, storage, and disposal in areas of the county” in certain circumstances); *see also id.* §§ 361.151–.153 (concerning county authority under the Solid Waste Disposal Act).

Moreover, commissioners courts have the responsibility to establish a program for recyclable materials generated by their county’s operations. *Id.* § 361.425(a)(1). To the extent necessary to accomplish its assigned duties, a commissioners court possesses implied authority to utilize recycling programs for the disposition of routinely discarded county waste, subject to other applicable law.⁴

⁴For example, aspects of a particular recycling program may be subject to competitive bidding or similar requirements. *See, e.g.*, TEX. LOC. GOV’T CODE § 262.030(a)(3). And any disposition of county property must not violate the constitutional prohibition against gratuitous grants of a “thing of value.” *See* TEX. CONST. art. III, § 52.

S U M M A R Y

Section 263.152 of the Local Government Code authorizes a county to periodically sell the county's surplus or salvage property by competitive bid or auction. "Salvage property" is personal property, other than items routinely discarded as waste, that because of use, time, accident, or any other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended. When a county attempts to sell salvage property by competitive bidding or auction but receives no bids, the county may dispose of the property through a recycling program under which the property is collected, separated, or processed and returned to use in the form of raw materials in the production of new products.

A commissioners court possesses implied authority to utilize recycling programs for the disposition of routinely discarded county waste, subject to other applicable law. Whether culverts the county removes from real property are "routinely discarded as waste" presents fact questions for the commissioners court to determine and cannot be resolved in an attorney general opinion.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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