



KEN ARMBRISTER  
District 18

The Senate of  
The State of Texas  
Austin 1871

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FILE # ML 43202-03  
I.D. # 43202

July 28, 2003

Ms. Susan Gusky  
Division Chief, Opinions Committee  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

RQ-0087-GA

Dear Ms. Gusky,

I would appreciate an Attorney General's opinion regarding property in Calhoun County, Texas. I have enclosed information regarding my inquiry.

Thank you in advance for the time and consideration for this request. If you have any questions, please call Steve Foster in my committee office at (512) 463-0390.

Sincerely,

Kenneth Armbrister

JUL 23 2003

The Honorable Ken Armbrister  
P.O. Box 12068  
Capitol Station  
Austin, TX. 78711

July 21, 2003

Honorable Senator Armbrister:

I am requesting an Attorney General's Opinion concerning property in Calhoun County, Texas. I have several questions:

1. *In a county of 50,000 or less, does the commissioners' court have the power to open a platted subdivision street, dedicated for public use, if the street has never been constructed (graded or paved), maintained, used by the public, placed on official maps or accepted for county maintenance?*
2. *In a county of 50,000 or less, does the commissioners' court have the power to remove any obstruction from a platted subdivision street, dedicated for public use, if the street has never been constructed (graded or paved), maintained, used by the public, placed on official maps or accepted for county maintenance?*
3. *Does the Calhoun County taxing authority have the power to deny the taxation of these properties and to proclaim them public streets (if the streets have never been constructed, used by the public or maintained by the county)?*
4. *Does an individual county commissioner have the authority to claim Dolphin Drive, Kingfish Landing, Bluefish Landing and Tarpon Landing as rights of way open to the general public?*
5. *Does the commissioners' court (in a county of less than 50,000) have the authority to claim Dolphin Drive, Kingfish Landing, Bluefish Landing and Tarpon Landing as rights of way open to the public without county maintenance?*

A plat was filed for record in 1971 dedicating "the use of roads, streets, waterways, and passageways to the public forever." Included in that dedication was a note by County Judge Jetton stating, the "streets are not accepted for maintenance at this time." No streets from this plat were ever accepted into the county road system for maintenance.

In 1972, Calhoun County (a county of less than 50,000) passed an order stating that no dedicated roads (dedicated for public use) would be accepted for county maintenance until they were constructed to county standards.

The developer of Enchanted Harbor (1971 plat) never constructed (paved) the roads and they were never accepted into the county road system for maintenance. A new developer purchased the failed subdivision leaving the majority of streets in place on the plat. People who had purchased property in the failed subdivision were not affected by the redevelopment of the new plat - Sunilandings, Phase 1, that rearranged an undeveloped portion of Enchanted Harbor and that added several streets and channelways.

This new plat (Sunilandings, Phase 1) was filed for record in September 1982 and was approved by the Calhoun County Commissioners' Court *with the provision that the streets were not to be accepted for county maintenance until they were constructed in accordance with the County regulations.* This dedication stated "dedicated to public use, as such, the streets and drainage easements." This 1982 dedication came one year after Chapter 281, which limits the modes by which a county of 50,000 or less can attain a public easement in a road. The effective date was August 31, 1981, and limited the acceptance of the dedication to county maintenance alone. (Article 6812h -Brooks Texas Practice-County and Special District Law 40.7) Then in 1984, the new developer constructed eight streets and they were accepted for county maintenance.

In 1987, this developer sold the four remaining unconstructed streets, their easements and the remaining undeveloped property. The new developer did not construct any new streets (Dolphin Drive and Kingfish, Bluefish and Tarpon Landings being the remaining undeveloped and unused streets in Sunilandings, Phase 1.) After making an attempt to finish the channelways, he was forced to declare bankruptcy. The four streets (Dolphin Drive and Kingfish, Bluefish and Tarpon Landings) and their easements, the channelways and canals were scheduled to be abandoned under Section 554a of the Title II Bankruptcy Code. The Bankruptcy Court's Trustee made a "Motion and Notice of Trustee's Intent to Abandon Property." On October 19, 2002, the United States Bankruptcy Court ordered those properties abandoned to the debtor. A writ of execution for a judgment held against the debtor was filed, so those properties were then sold at a Class 5 Sheriff's Sale. Many properties were sold at that sale and the ones I am most concerned about are Kingfish Landing, Dolphin Drive, Bluefish Landing and Tarpon Landings, as well as all drainage easements. After the sheriff's sale, my wife and I purchased these properties (Kingfish Landing, Bluefish Landing, Tarpon Landing, and all the remaining portion of Dolphin Drive... and all drainage easements...) from an individual. The Motion and Notice of Trustee's Intent to Abandon Property and the Order Authorizing the Abandonment of Property are filed in the Calhoun County Courthouse.


I did not receive a tax notice for these properties, so on April 3, 2002, I wrote the Calhoun County Appraisal District, to request that my properties (Dolphin Drive and Kingfish, Bluefish and Tarpon Landings) be added to the tax roll as acreage. This office refused to put my property on the tax roll and responded that the abandonment by the bankruptcy court did not change the dedication and that my properties were public right of ways, even though the streets had never been constructed or accepted into the county road system for maintenance.

In April 2002, I received a letter from a county commissioner declaring my properties public streets. There was no order or resolution in the Calhoun County Commissioners' Court minutes claiming a right of usage but there was an expressed denial of county maintenance until the streets were constructed to county standards.

Please contact me at (361) 972-2788 if you have any questions.

Thank you for your time and consideration.

Sincerely,

  
Leonard Kunefke, Jr. - a concerned citizen  
508 Mertie Ave.  
Palacios, TX. 77465