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OPINION COMMITTEE

March 14, 2005

Greg Abbot
Office of Attorney General
Attorney General Opinion Division
300 W 15th St, Suite 205
Austin, Texas 78711-2548

FILE # MC-44166-05

I.D. # 044166

RQ-0328-GA

RE: Whether it is appropriate for a County Commissioner to accept road material from residents a subdivision and use County employees to repair the subdivision road?

Whether it is appropriate for a County road maintenance crew to perform emergency repairs on a road defined as a neighborhood road?

Whether it is appropriate for a County road maintenance crew to perform emergency repairs on a road defined as a private road?

Dear Sirs:

This is a request for an Attorney General Opinion on regarding requested maintenance of neighborhood roads in the precincts of San Jacinto County. If the requested repairs are permitted would the repairs and maintenance eventually change the classification of the roads by statute, prescription or other means? The population of San Jacinto County is approximately 22,000.

The first scenario consists of regular maintenance of a neighborhood road in a subdivision. A local subdivision was created and properly filed before subdivision standards were adopted by the county. The roads have been dedicated to public use but not accepted as county roads. Residents of the subdivision have proposed to the precinct commissioner that the residents will purchase road material and have the precinct road crews perform the routine regular maintenance on the roads with this material.

A previous Attorney General Opinion, Opinion No. JM-1155 (1990) concluded a commissioner must obtain approval of the entire court before donated material can be accepted to use on county roads.

The second scenario consists of emergency repairs to a neighborhood road and a private road.

During a recent rainstorm a previously accepted neighborhood road was washed out and made extremely dangerous to the residents as well as the local school buses. Due to this emergency repairs were made by county road crews. This precinct commissioner is concerned that the road will revert to a dangerous condition and that the repairs will obligate the county for future repairs.

Regarding neighborhood roads the Texas Transportation Code Section 251.03 (f) states: The commissioners court is not required to maintain a road established under this section using county employees but shall make the road initially suitable for use as an access public road.

After the neighborhood road incident a private road in a different precinct was made impassable for a special needs school bus. What ramification does the classification of a private road have on the ability to perform necessary repairs?

Under articleI III, section 52f of the Texas Constitution in a county with a population of five thousand or less the county may not maintain a private road even if it charges for the work.

Please do not hesitate to call if you need any additional information to give an opinion on the above request.

Very truly yours,



Mark E. Price
Criminal District Attorney

Cc: San Jacinto County Judge
Commissioner Pct 1
Commissioner Pct 2
Commissioner Pct 3
Commissioner Pct 4