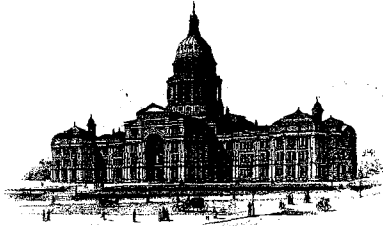


# TEXAS HOUSE OF REPRESENTATIVES

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FRANK J. CORTE JR.

RECEIVED

FEB 27 2006

OPINION COMMITTEE

February 22, 2006

The Honorable Greg Abbott  
Attorney General of Texas  
209 W. 14th Street  
Austin, Texas 78701

FILE # ML-44641-06  
I.D. # 44641

**RQ-0455-GA**

Dear General Abbott:

As chair of the House Committee on Defense Affairs and State-Federal Relations, I ask for your opinion on several questions relating to S.B. No. 7, Acts of the 79th Legislature, 2nd Called Session, 2005, which placed limits on the use of the power of eminent domain in Texas. Senate Bill No. 7 was enacted in response to the United States Supreme Court's decision in Kelo v. City of New London, which allowed governmental entities to freely use the power of eminent domain for economic development purposes.

As part of S.B. No. 7, a section was added to Chapter 552, Government Code, that reads:

Sec. 552.0037. CERTAIN ENTITIES AUTHORIZED TO TAKE PROPERTY THROUGH EMINENT DOMAIN. Notwithstanding any other law, information collected, assembled, or maintained by an entity that is not a governmental body but is authorized by law to take private property through the use of eminent domain is subject to this chapter in the same manner as information collected, assembled, or maintained by a governmental body, but only if the information is related to the taking of private property by the entity through the use of eminent domain.

Also, the limitations on the use of the power of eminent domain for economic development purposes, as added by S.B. No. 7, were placed in Section 2206.001, Government Code. In Subsection (c) of that section, the authority of several entities to exercise eminent domain was exempted from those limitations. One exemption was for:



DISTRICT 122

COMMITTEES: CHAIR-DEFENSE AFFAIRS AND STATE-FEDERAL RELATIONS • ENERGY RESOURCES REDISTRICTING  
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December 2, 2005

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(7) the operations of:

(A) a common carrier subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act; or

(B) an energy transporter, as that term is defined by Section 186.051, Utilities Code; . . . .

With regard to these new provisions, I ask:

1. Do the provisions of Chapter 552 that provide for criminal penalties or for the assessment of costs of litigation and attorney's fees apply to a private entity that holds information subject to Section 552.0037 in the absence of specific language making those provisions applicable to those entities?

2. Because Section 552.0037 makes certain information subject to Chapter 552 but does not provide that the private entities holding the information are subject to the chapter is Section 552.0037 too vague to be enforceable?

3. Does a common carrier that transports natural gas liquids or oil or gas products qualify under the exemption prescribed by Section 2206.001(c)(7) regardless of the form of the business organization of the common carrier?

4. Given that Section 552.004, Texas Government Code, provides that governmental bodies may determine the time for which information that is not currently in use will be preserved, subject to applicable law, can entities subject to Section 552.0037, Texas Government Code, that are not governmental bodies but are authorized by law to take private property through the use of eminent domain, establish and follow record retention policies?

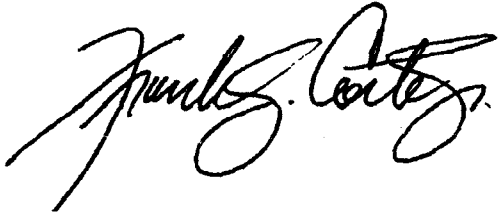
5. Is it correct that Section 552.0037, Texas Government Code, only applies to information concerning condemnation proceedings filed in Texas, and not to condemnation proceedings filed outside of Texas?

6. Is it correct that Section 552.0037, Texas Government Code, only applies to entities that are not governmental bodies but that are authorized by law to take private property through the use of eminent domain in Texas, and not to entities exercising the right of eminent domain outside of Texas?

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Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank G. Coates". The signature is written in a cursive style with a large, sweeping initial "F" and a long, trailing flourish at the end.