

Office of the County Attorney

Rains County, Texas

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VIA CERTIFIED MAIL # 7004 2890 0000 1889 0895

RETURN RECEIPT REQUESTED

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The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

JUL 28 2008

OPINION COMMITTEE

FILE # ML-45776-08

I.D. # 45776

Re: Request for Attorney General Opinion on Regarding
Removal of Structures Deemed to be a Safety Hazard from County Right-of-Way

Dear Attorney Abbott and Opinion Committee:

RQ-0729-GA

Members of the Rains County Commissioners' Court have requested that your office provide an opinion on the following issues, accordingly, I am submitting the following questions to you at their request.

Questions

Question No. 1.

Does the County's authority to maintain public roads under Section 251.003 of the Transportation Code, or any other statute or case law, give the County authority to remove structures such as brick or stone mailboxes which the County deems to be a safety hazard from County right-of-way?

Section 251.003 of the Transportation Code provides as follows:

(a) The commissioners court of a county may:

- (1) make and enforce all necessary rules and orders for the construction and maintenance of public roads;
- (2) hire the labor and purchase the machinery and equipment needed to construct and maintain public roads; and
- (3) use any necessary material most convenient to build, repair, or maintain public roads, regardless of the location or extent of the material.

(b) The court may enter any necessary order for the use of inmates of the county jails to work on the county roads or to build bridges.

Question No. 2.

Does the County have the authority to require the landowners to remove (at the landowners expense) mailboxes from County right-of-way which the Commissioners' Court determines to be a safety hazard?

Question No. 3.

Are there any legal remedies, other than a suit to abate a nuisance, to effect the removal of the mailboxes from County right-of-way?

Question No. 4.

When the adopted roads have been established by implied dedication, prescription or otherwise, have not been particularly described by metes and bounds or any other documents of record, and have not been classed, does the County's right-of-way include the area maintained by the County or is it limited to the area traveled?

Brief

In Rains County, similar to many other counties, individuals have erected mailboxes—in some instances adjacent to the paved county roadway or within a few feet of the paved roadway. These mailboxes are constructed of various materials including stone, brick, concrete and sometimes large metal posts. Our commissioners perceive these mailboxes to be a safety hazard to the general public and would like to require the landowners to remove the existing mailboxes and replace them with others which are easily knocked down when struck by a vehicle.

Almost all of the roads in question are roadways which have been established by implied dedication. There are generally no documents with metes and bounds specifying the location of the roads.

In City of San Antonio v. City of Boerne, the Texas Supreme Court held that "the county lacked authority to petition municipality to annex portions of county roads." See City of San Antonio v. City of Boerne, 111 S.W.3d 22, 31-32 (Tex.2003). The court in making this holding stated that the county's statutory grant of "general control over roads" which was limited to a county's "duty to make the roadways safe for public travel." This case seems to indicate not only that the County has authority to remove structures which it deems make the roadways unsafe for travel, but instead *has a duty* to make the roads safe for travel.

I would appreciate a response to this request for an opinion at your earliest opportunity.

Respectfully,



Robert F. Vititow, Rains County Attorney