OFFICE OF THE COUNTY ATTORNEYRECE!

RQ-0900-GA

HUNT COUNTY, TEXAS

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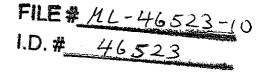
OPINION COMMITTEE

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July 14, 2010



VIA FACSIMILE TRANSMISSION TO 512-463-2092 and CMRRR# 7008 1140 0004 9439 0156

Honorable Greg Abbott Attorney General for the State of Texas 300 West 15th Street, Suite 205 Austin, Texas 78711-2548

RE: Request for Attorney General Opinion Texas Transportation Code § 251.053

Dear General Abbott:

I am seeking your opinion regarding the constitutionality of Texas Transportation Code § 251.053.

Pursuant to Texas Transportation Code § 251.053, Matthew H. McLaughlin has requested that the Hunt County Commissioner's Court declare a public road through privately owned property adjacent to Mr. McLauglin's property. According to § 251.053, "A person who owns real property to which there is no public road or other means of public access may request that an access road be established connecting the person's real property to the county public road system by making a sworn application to the commissioners court requesting the court to establish the road." Texas Transp. Code § 251.053(b).

Honorable Greg Abbott July 14, 2010 Page 2

In compliance with § 251.053(b), Mr. McLauglin has submitted a sworn statement to the Hunt County Commissioners stating that (1) he is the owner of real property to which there is no public road or other public means of access; (2) he is requesting that an access road be established connecting his property to the Hunt County public road system; (3) designating the lines of the proposed public road; (4) listing the names and places of residence of the persons that would be affected by the establishment of the road; and (5) describing why the road is necessary.

The Attorney General's Office has previously discussed § 251.053 in opinions dated November 10, 1998 and September 26, 2005. In Opinion DM-487 (1998), the Attorney General declined to answer questions regarding "access" under § 251.053 concluding that a court would likely find that the neighborhood road statute is unconstitutional because the statute does not require a public purpose for the taking of private property in contravention of article I, section 17 of the Texas Constitution. In Opinion GA-0359 (2005), the Attorney General made no mention of Opinion DM-487's declaration that the statute would likely be found void but rather discussed the statute as it pertained to maintenance of county roads as if the statute were valid.

We believe that if challenged, a court would find § 251.053 unconstitutional as it does not require a public purpose for the taking of private land. Our opinion is consistent with both DM-487 and Proposition 11 (2009) which recently amended article I, section 17 of the Texas Constitution by explicitly restricting the taking of private property for non-public uses.

In light of the inconsistency of these two opinions, Hunt County respectfully requests an opinion from the Attorney General regarding the constitutionality of § 251.053.

Sincerely,

Joel D. Littlefield County Attorney

JDL/bp Enclosures