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OPINION COMMITTEE



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Texas State Cemetery

June 21, 2011

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Formal Attorney General Opinion

Dear General Abbott:

By this letter, a majority of the Texas State Cemetery Committee (the "Committee") requests a formal opinion from the Office of the Texas Attorney General. Specifically, the Committee seeks a ruling concerning the scope of its authority and jurisdiction over a roadway, Texas State Highway 165 ("SH 165"), a majority of which is located within the boundaries of the Texas State Cemetery (the "Cemetery").

Known as one of the shortest highways in the State of Texas, SH 165 spans 9/10ths of a mile in length, the majority of which is situated within the Cemetery. With a posted speed limit of 10 miles per hour, SH 165 connects to no other roads in the state highway system. From its northernmost point at the Cemetery entrance gate on East 11th Street between Navasota and Comal Streets in Austin, Texas, SH 165 runs south through a portion of the Cemetery grounds and then eastward through Cemetery grounds until its intersection with Comal Street. Although the remaining portion of SH 165 runs south along Comal Street to East 7th Street, official signs identifying SH 165 only appear along the portion of the roadway within the Cemetery's boundaries.

The Cemetery is governed by the Committee, which the Texas Legislature established in 1997. See Tex. Gov't Code Ann. §2165.256 (Vernon 2008). The legislature conferred broad authority upon the Committee; all operations of the Cemetery are subject to oversight by the Committee. See *id.* §2165.256(a). The legislature also expressly addressed in statute individual aspects of Cemetery operations and administration, including budget and salaries of employees, burial eligibility, allocation of number of grave sites, monuments and grave markers, landscaping, designation of different burial areas, solicitation of plot reservations, and establishment and operation of a nonprofit corporation for the purposes of fundraising and provision of services to assist the Committee.

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The Cemetery operates both as a popular historical site and as a functional cemetery. Numerous notable Texans are laid to rest at the Cemetery, leading to its placement on the National Register of Historical Places and drawing approximately 15,000 schoolchildren, among other visitors, each year for tours. As the only existing roadway in the Cemetery, SH 165 is used for a variety of purposes directly related to the Cemetery's operations.

Last fall, the Committee acted to address mounting concerns about the increasing recreational use of Cemetery grounds. After discussion in open meeting concerning dual goals of protecting the safety of visitors and the solemn and peaceful nature befitting a cemetery, the Committee decided to ban bicycles in the Cemetery and directed the Cemetery Superintendant to contact the Texas Department of Transportation (TXDOT) to seek its assistance. In particular, the Cemetery Superintendant informed TXDOT of the Committee's decision and requested permission to post associated signage along SH 165. TXDOT responded that SH 165 did not fall within the scope of its authority,¹ but rather was under the authority of the City of Austin in accordance with Section 542.202(a)(4) of the Texas Transportation Code, which permits a city to regulate the operation of bicycles on a highway within its jurisdiction under its police powers.² Consequently, TXDOT stated that it was unable to ban bicycles on SH 165 and could not authorize any related posting of signs to prohibit bicycles.

Whether and to what extent state property is subject to local police powers, however, was at issue in a formal opinion, JM-117, issued by your office. Specifically, in JM-117, you considered the question of whether all buildings, structures, and land under the control of federal and state agencies are exempt from municipal zoning. Ultimately, you concluded in that opinion that a state agency is not subject to local exercises of police powers if "delegated by law the responsibility for regulation and control of state property." The Cemetery grounds have been dedicated by statute to control and regulation by the Committee. See Tex. Gov't Code Ann. §2165.256.

Thank you for your assistance in this matter.

Sincerely,



Scott Sayers

Chairman, Texas State Cemetery Committee

Cc: Kay Molina, TFC
Shyra Darr, TFC

¹ TXDOT cited Section 545.065 of the Texas Transportation Code as limiting its authority to prohibit bicycles to limited-access or controlled access highways.

² TXDOT noted that in Attn'y Gen. Op. No. JM-1109, your office discussed the authority of municipalities regarding use of bicycles and highways due to the risk of public harm and reviewed what constitutes a reasonable exercise of local police powers.