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August 19, 2022

*via email to: [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)*

The Honorable Ken Paxton  
Attorney General, State of Texas  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, TX 78711-2548

**RE: County authority under Texas Transportation Code § 251.051 and Texas Transportation Code § 251.013 over public roads not included in the county maintenance system**

Dear Attorney General Paxton:

B. D. Griffin, County Attorney of Montgomery County, Texas respectfully requests an opinion on a county's authority under Texas Transportation Code § 251.051 and Texas Transportation Code § 251.013 over public roads when such roads have not been accepted into the county maintenance system.

Specifically, the Montgomery County Attorney submits the following questions:

1. Does Texas Transportation Code § 251.051 provide authority for a county commissioners court to abandon a public road that has not been accepted by the county into its maintenance system?
2. Does Texas Transportation Code § 251.013(b) provide authority for a county commissioners court to name or rename a public road that has not been accepted by the county into its maintenance system?

*Abandonment of roads, Texas Transportation Code § 251.051,*

Chapter 251 of the Texas Transportation Code provides for the general county authority relating to roads and bridges. Section 251.016 grants the commissioners court of a county general control over all roads, highways and bridges in the county. TEX.TRANSP.CODE §251.016 (V.A.T.S. 1999).

Transportation Code § 251.051 (V.A.T.S 1995) provides specific statutory authority for a commissioners court to close, abandon or vacate a “public road” (subject to the limitations of §251.058)<sup>1</sup>. TEX.TRANSP.CODE §251.051(b) (V.A.T.S 1995). Transportation Code § 251.002 states that a public road is “[a] public road or highway that has been laid out and established according to law and that has not been discontinued.” TEX.TRANSP.CODE § 251.058 (V.A.T.S 2015). The Transportation Code defines “abandon” as “to relinquish the public’s right of way in and use of the road.” TEX.TRANSP.CODE § 251.001 (V.A.T.S 1995).

Previous Attorney General Opinions have limited a commissioners court’s authority over public roads to county maintained roads. See, Tex. Att’y Gen. Op. No. CM-534 (1969) (formerly M-534); Tex. Att’y Gen. Op. No. GA-0139 (2004); Tex. Att’y Gen. Op. No. GA-0809 (2010). AG opinion no. GA-0139 stated that the county lacked authority to order the removal of an obstruction across a dedicated public road that had not been accepted by the county for maintenance. In rendering the opinion, the Attorney General stated that “[d]edications that are not accepted are not county roads, and a county has no authority to order the removal of an obstruction from a road that is not a county road.” *Id.* at 4.

AG Opinion No. GA-0809 found that the general grant of authority over public roads in Section 251.016 did not confer the authority upon the Denton County Commissioners Court to regulate traffic on non-county maintained roads. The specific statutes cited in GA-809 expressly provided authority for traffic regulation only on *county* roads. *Id.* at 2. The AG opinion also cited *City of San Antonio v. City of Boerne*, 111 S.W.3d 22 (Tex.2003) as (1) limiting the broad grant of authority under Section 251.016’s statutory predecessor and also as (2) allowing a finding that traffic regulation could be in furtherance of a county’s function in protecting the public’s interest in transportation.

Similarly, AG Opinion No. CM-534 found that the commissioners court’s authority was administrative in determining whether a road was a county road. The commissioners court would act “at its peril” and, upon making the determination a public road was a county road the county would incur the obligation to maintain the road. *Ibid* at 3. The opinion states,

It is the opinion of this office ...that the commissioners court has the power to make an administrative determination, but is powerless to make a judicial determination, as to whether a road is, or is not, a public road; such administrative decision serving only as a foundation upon which the commissioners court may base its action or inaction in the matter.

AG Opinion No. CM-534 further determined that the commissioners courts’ power to order removal of an obstruction is dependent upon the commissioners courts’ administrative power over the road as a county road. *Id.* at 4.<sup>2</sup> Other AG opinions determining county rights to control roads assume the roads are county roads. See, Tex. Att’y Gen. Op. No. JM-1241 (1990) (prevent planting and order removal of trees and shrubs); Tex. Att’y Gen. Op. No. GA-0693 (2009) (removal of mail boxes deemed safety hazard); Tex. Att’y Gen. Op. No. GA-0430 (2006)

<sup>1</sup> Section 251.058(a) effectively prevents a commissioners court from to closing a road over the objection of an abutting property owner. TEX.TRANSP.CODE §251.058(a) (V.A.T.S 2015).

<sup>2</sup> Assuming commissioners court lacks the authority to abandon a road (or a portion thereof) that has not been accepted by the county, Montgomery County files a disclaimer of interest when requested to abandon a road or portion of a road which has not been accepted by the county.

(removal of abandoned mobile homes).

*Naming of roads, Texas Transportation Code § 251.013*

Texas Transportation Code § 251.013 provides the authority for a commissioners court regarding road names and addresses. Subsection (b) states (in part) that the commissioners court of a county by order may adopt a name for a public road located wholly or partly in an unincorporated area of the county. TEX.TRANSP.CODE §251.013(b) (V.A.T.S 2009). AG Opinion No. JC-0301 addressed whether Calhoun County could change the name of a county road once a name has been established. It appears Hays Road (the road in question) was a county road rather than a public road which the county had not accepted. Language in the opinion creates an ambiguity as to whether the opinion applied only to county roads or included public roads not accepted by the county. See Tex. Att’y Gen. Op. No. JC-0301 (2000)(“You ask whether the commissioners court of a county has authority to change the name of a county *or public road* once a name has already been adopted or established by common usage.”) (“The authority of a commissioners court to name public roads under Section 251.013 includes the authority to rename a *public road*.”) (Emphasis added). AG Opinion No. JC-0301 continues stating that Section 251.013 “expressly addresses the naming of county roads.” Id. at 1. The opinion describes subsection (b) as providing separate authority for the commissioners court to name a “county road” regardless of the adoption of uniform standards for county roads under subsection (a).

The previous AG opinions, *supra*, which limit the commissioners court’s authority under the Transportation Code to county maintained roads may apply to the commissioners court’s authority under the Transportation Code to name or rename roads. See Tex. Att’y Gen. Op. No. CM-534 (1969) (formerly M-534); Tex. Att’y Gen. Op. No. GA-0139 (2004); Tex. Att’y Gen. Op. No. GA-0809 (2010).

Thank you for your assistance in this matter. Please do not hesitate to contact me if you have any questions or if you are in need of additional information.

Respectfully,



B. D. Griffin,

County Attorney of Montgomery County, Texas

BDG/