



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. Arnold W. Franklin
County Attorney
Atascosa County
Jourdanton, Texas

Dear Sir:

Opinion No. O-6902

Re: Whether that portion of the highway from Jourdanton through Poteet to the Bexar County Line was officially designated as part of the State Highway System at the time Atascosa County delivered its deed to the Highway Commission and otherwise complied with requirements of Minute No. 17306.

We have your letter of October 30, 1945, together with a letter from the Honorable Earl Scott, County Judge of Atascosa County, dated October 25, 1945, to which is attached a brief of the questions involved, submitted jointly by Judge Franklin and you.

Inasmuch as the letter from Judge Scott, dated October 25, 1945, fully sets out the facts necessary to the determination of the question, we are copying it as follows:

On or about March 3, 1928, Road District #3-A of Atascosa County was created and bonds voted in the amount of \$165,000.00. During that year, 1928, proceeds of these bonds were spent for the construction of approximately 13 miles of paved road, approximately 11 miles of which was from Poteet north to the Bexar-Atascosa County Line.

"During the years 1935 and 1936, a hard-surfaced highway was built from Poteet to Jourdanton. This road was built with County funds and WPA projects, and no bonds were issued for this purpose.

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"For several years subsequent to the completion of the road from Poteet to Jourdanton, many efforts were made to have this road designated by the State Highway Commission as a part of the State Highway System. On several occasions delegations appeared before the State Highway Commission for this purpose and finally on May 20, 1940, a delegation of 157 citizens of the Poteet community, headed by the County Judge of Atascosa County, together with a small delegation from Bexar County, appeared before the Commission, and at that meeting the following resolution was entered on the minutes of the State Highway Commission:

'Minute No. 17306
May 20, 1940

'In BEXAR AND ATASCOSA COUNTIES, it is ordered that a highway be designated extending from a connection with the Highway System at or near Jourdanton northerly to a connection with U. S. Highway No. 81 near the south city limits of San Antonio passing in the vicinity of Poteet.

'This highway designation is made on condition that the Counties involved will agree in advance to transfer title of the existing right-of-way to the State Highway Department and on the further condition that the Counties will supply such additional right-of-way in the future when so requested as may be required of widths and on location approved by the Highway Department. State maintenance of this designation will not be assumed until the Counties have placed the existing road in an acceptable state of repair.

'It is understood that the Highway Department is not in position financially to provide for construction or reconstruction of this designated highway at any time in the near future.

'This order of the Commission will become effective at such time as it is accepted officially by appropriate resolutions passed by the governing bodies of Bexar and Atascosa Counties.'

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"Immediately thereafter, at the next regular meeting of the Commissioners' Court at Atascosa County held on June 10, 1940, appropriate resolution was entered in the minutes of the Commissioners' Court of said County agreeing to the conditions of the designation and authorizing the County Judge to execute and deliver to the State Highway Department deed to the necessary right-of-way as required by the Department before taking this road over for maintenance. A certified copy of this resolution was furnished the Highway Department and a copy thereof is attached hereto. Shortly thereafter, by deed dated June 27, 1940, said right-of-way was conveyed to the State Highway Department and deed was delivered to the Division Engineer at San Antonio, Texas. The Division Engineer acknowledged receipt of same and reported that the deed had been forwarded to the main office of the Department at Austin, Texas. This deed is of record on page 234 of Volume 147 of the Deed Records of Atascosa County, Texas, and the title of this right-of-way has been in the State of Texas for more than five years by virtue of said deed. Certified copy of said deed is attached hereto. Also attached hereto are copies of letters from Highway Commissioners Bobbitt and Hines.

"It is admitted that Bexar County did not comply with the conditions of the designation of May 30, 1940, and that the Highway Commission did not take over the maintenance of said highway from Potest north until September 1, 1945, when it passed the following resolution:

'Minute 21383
August 22, 1945

'In ATASCOSA AND BEXAR COUNTIES, IT IS ORDERED that a State Highway be designated from the northern terminus of Highway No. 346 at Potest in Atascosa County, extending northerly to San Antonio in Bexar County, and the State Highway Engineer is directed to assume maintenance of the existing road, which will serve as the temporary route for this highway, effective September 1st.'

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"In view of the above facts all of which are a matter of record with the Highway Department and the Commissioners' Court at Atascosa County, Texas, please answer the following question: Was not that portion of the highway from Jourdanton through Potest to the Bexar County Line officially designated as part of the State Highway System at the time Atascosa County delivered its deed to the Highway Commission and otherwise complied with requirements of Minute No. 17306?"

"I hand you herewith a brief covering the question of law involved as I see it."

From your brief which is attached to your request for opinion, we quote from page 3 of State Highway Commission Minute No. 19374:

"Minute No. 19374 - 4-29-42 Highway #346

"In Atascosa and Bexar Counties: It is ordered that Minute No. 17306 be and is hereby cancelled. It is further ordered that a Highway be designated from Jourdanton to Potest along the route of the recently completed road and the State Highway Engineer is directed to assume maintenance thereon effective the date of this Commission order."

From the facts contained in the brief submitted by you, it is obvious that Atascosa County fully complied with the provisions set out as conditions precedent in the Highway Department's Minute No. 17306, as evidenced by your letter of transmittal of the deed to the Highway Engineer and the subsequent recording of the deed in the Deed Records of Atascosa County. However, it is stated in your letter that "it is admitted that Bexar County did not comply with the conditions of the designation of May 30, 1940. . . ." Upon this admission, we think our conclusion herein must be based.

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Opinion No. O-5935, dated April 25, 1944, and cited by you in your brief, was based upon a set of facts and upon a Minute of the State Highway Commission which did not contain a designation which would have the effect that the condition in Minute No. 17630 contained. The facts in the case upon which that opinion was predicated required nothing more than that the Commissioners' Court purchase the additional right-of-way and when the Commissioners' Court, being so directed, subsequently performed the act of acquiring the additional right-of-way, all conditions precedent had been met.

The condition to be performed in the instant situation required that the counties of Atascosa and Bexar comply with certain requirements, and quoting from such Minute, we find the following:

"This highway designation was made on condition that the counties involved will agree in advance to transfer title of the existing right-of-way to the State Highway Department and on the further condition that the counties will supply such additional right-of-way in the future when so requested as may be required of widths and on location approved by the Highway Department. State maintenance of this designation will not be assumed until the counties have placed the existing road in an acceptable state of repair."

In view of the express provisions of the act of the Highway Commission, as reflected in Minute No. 17306, the conditions precedent must be met by both counties before the Highway Commission's act would be construed by us to constitute a designation for state highway purposes and make such county road a part of the State Highway System.

The State Highway Commission is delegated the discretionary power to select the roads and/or routes which shall constitute the State Highway System, and they are also authorized to make such designations as they see fit with conditions to be performed by the counties before a temporary or preliminary designation becomes a final designation sufficient to bring such county road into the State Highway System. We find nothing in the statutes which would preclude the Highway Department from making

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such preliminary designations and nothing to prevent them from imposing upon the counties a condition precedent before a final designation should be made.

Atascosa County performed its part of the requirement of the conditional designation and it is perhaps unfortunate that she could not prevail upon her sister county to comply as readily in order that such Highway could have been finally designated in 1940; however, such omission of Bexar County was fatal to the conditional designation as the offer or tender of the Highway Commission was not accepted.

Therefore, it is the opinion of this department that the portion of the Highway from Jourdanton to Potest along the route as set out in Minute No. 19374 of the State Highway Commission, dated April 29, 1942, became a part of the State Highway System of this State on such date of April 29, 1942, and that the remainder of the county road referred to in your inquiry did not become a part of the State Highway System by designation until August 22, 1945, at which time the State Highway Commission, by Minute No. 21383, finally designated such route extending from Potest in Atascosa County northerly to San Antonio in Bexar County.

Our Opinion No. 0-5935, above referred to, and cited by you in your brief, is not in conflict with the conclusions herein reached, for the facts discussed in that opinion are entirely different from the facts in the instant case.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

Harris Toler

Harris Toler,
Assistant.

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