



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

July 9, 1951

Hon. Jim-W. Weatherby  
District Attorney  
38th Judicial District  
Kerrville, Texas

Opinion No. V-1203

Re: Authority of the commissioners' court to open a neighborhood road under the submitted facts.

Dear Sir:

Reference is made to your request for our opinion, which reads in part as follows:

"The Commissioners' Court of Bandera County, Texas, have had presented to them a petition by ten freeholders, for an order to establish a neighborhood road through two tracts of land separately owned, leading from a public highway through the land of others to land owned by another party, under Article 6711, R.C.S. of Texas. This road is a cul-de-sac, and will primarily benefit the owner of the land where the road terminates. This tract of land was purchased by the present owner and it does not have a road leading to it. The previous owner used a road through enclosed land of another but the road was never established as a road by the commissioners court. When the present owner of the land purchased it, that is, the land through which the road runs, he would not allow the owner of the land away from the road to use the road to get to his land. . . .

"Does the Commissioners Court of Bandera County, Texas have the right to open this road under Article 6711, R.C.S. of Texas?

"Does the fact that the road would be a cul-de-sac and primarily for the benefit of the owner of the land where the same terminates, affect their jurisdiction?"

Under additional facts submitted by the County Attorney of Bandera County, it does not appear that any of the petitioners reside within an inclosure and that some of the petitioners reside in the town of Medina and one in San Antonio, while others reside in the vicinity of the proposed road. Therefore, we shall confine our opinion to that part of Article 6711, V.C.S., which relates to a petition by ten freeholders.

Article 6711, V.C.S., provides in part:

"Any lines between different persons or owners of lands, any section line, or any practicable route, that the Commissioners' Court may agree upon, in order to avoid hills, mountains or streams through any and all inclosures, may be declared public highways upon the following conditions:

"1. Ten freeholders, or one or more persons living within an inclosure, who desires a nearer, better or more practicable road to their church, county seat, mill, timber, or water, may make sworn application to the Commissioners' Court for an order establishing such road, designating the lines sought to be opened and the names and residences of the persons or owners to be affected by such proposed road, and stating the facts which show a necessity for such road."

The above statute was originally Section 33 of Chapter 64, Acts 15th Leg., 1876, p. 63. Article 6705, V.C.S. was also a part of the same act (Secs. 6 and 7), and provides as follows:

"The commissioners court shall in no instance grant an order on an application for any new road, or to discontinue an original one, or to alter or change the course of a public road, unless the applicants have given at least twenty days notice by written advertisement of their intended application, posted up at the court house door of the county and at two other public places in the vicinity of the route of such road. All such applications shall be by petition to the commissioners

court, signed by at least eight freeholders in the precinct in which such road is desired to be made or discontinued, specifying in such petition the beginning and termination of such road, provided an application to alter or change a road need not be signed by more than one freeholder of the precinct."

Therefore, since both Articles 5705 and 5711 were originally a part of the same act, they should be construed together. When this is done, we believe that the ten freeholders referred to in Article 5711 means freeholders in the road precinct in which the road is to be established just as it does in Article 5705. However, in Attorney General's Opinion V-443 (1947), it is stated:

"It is our opinion that, insofar as any residence requirement is concerned, 'freeholders in the precinct' and 'freeholders of the precinct' must be given the same meaning. We have concluded that such terms, within themselves, do not imply that a freeholder must be a resident of the precinct. Under the provisions of Article 5705, non-resident freeholders, having a fee interest in real estate in the road precinct, are qualified petitioners."

Under the facts submitted, it is not stated whether the ten petitioners are freeholders in the road precinct where the proposed road is to be located. If they are, the commissioners' court would have jurisdiction in the matter, and should the commissioners' court determine that such a road would provide "a nearer, better or more practicable road to their church, county seat, mill, timber or water," and that a necessity exists for the road, it would be authorized to establish such a road under the provisions of Article 5711.

We believe your second question is answered by Attorney General's Opinion V-675 (1948), and the fact that the road would be a cul-de-sac and primarily for the benefit of the owner of the land where the same terminates would not affect the commissioners' court's jurisdiction. We are enclosing a copy of this opinion.

SUMMARY

The commissioners' court has authority to establish a neighborhood road upon the petition of ten freeholders of the precinct in which the road is to be located if it finds that such road would provide "a nearer, better or more practicable road to church, county seat, mill, timber, or water" and that a necessity exists for the road. Art. 6711, V.C.S.

APPROVED:

J. C. Davis, Jr.  
County Affairs Division

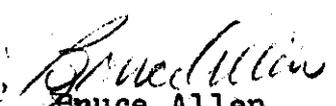
Jesse P. Luton, Jr.  
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BA:mw

Yours very truly,

PRICE DANIEL  
Attorney General

By,   
Bruce Allen  
Assistant