



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

November 3, 1993

Honorable Richard J. Miller
Bell County Attorney
P.O. Box 1127
Belton, Texas 76513

Letter Opinion No. 93-98

Re: Whether Bell County is responsible for maintenance of a drainage ditch on private land reflected in a rural subdivision plat approved by the commissioners court, where the ditch never has been maintained by the county and where flooding from the ditch is not the result of drainage from, or improvements to, a county road (ID# 21823)

Dear Mr. Miller:

Your request for an opinion concerns a storm water drainage problem in a rural subdivision in Bell County. The plat for the subdivision was approved by the commissioners court pursuant to the statutory predecessor of section 232.002 of the Local Government Code. There is located between two private lots in this subdivision a certain ditch, which was dug by the developer of the subdivision and which, in the past, one of the two abutting landowners maintained clear of obstructions. During the period of maintenance, the ditch presented no drainage problem. The county never has maintained the ditch.

The landowner who used to keep the ditch clear sold his land, and the succeeding landowner has not continued maintenance. As a result, the ditch has become obstructed with silt, grass, and weeds. The buildup in the ditch causes stormwater to back up and flood two houses on privately-owned lots located uphill.

Between the obstructed ditch and those two houses lies a road built on a 60-foot-wide roadway that the developer dedicated to the county. The road has a transverse drainage pipe or culvert that empties into the ditch, which pipe the county has maintained clear. The ditch lies in a drainage easement that is reserved in the plat to the developer.

You also mention another factor that contributes to the flooding: a new residential development nearby, which apparently has caused increased runoff of water. We understand that even with the increased runoff attributable to the development, the drainpipe under the road still is adequate to allow proper drainage. You inform us that

because of the increased runoff due to the nearby development, it probably will be necessary not only to clear out the existing ditch but also to extend it downstream into adjoining private property along an easement reserved on the plat for the purpose "of allowing the drainage engineering and channeling improvements . . . to be carried out to its [sic] full effectiveness."

You ask us who is responsible for maintaining the ditch so that drainage will be adequate. To the extent that this question involves the rights and responsibilities of private parties arising from their relationships with each other as landowners affected by the ditch, the answer will depend on an application of the facts to the law of easements. *See generally, e.g., Drye v. Eagle Rock Ranch, Inc.*, 364 S.W.2d 196 (Tex. 1962) (reviewing law of easements). The information you present does not resolve all issues of fact relevant to a determination of rights and responsibilities of these private parties; nor is it likely that all the parties involved would be in agreement as to what the facts are. We therefore will limit your question to a consideration of whether Bell County is legally responsible for the flooding problem as you describe it. For the following reasons, we are of the opinion that Bell County is not responsible.

The facts you present to us show no causal relationship between the existence of the road and drainpipe and the flooding. We are aware of no law that would impose liability upon the county merely because flooding occurs near a county road.

Your concern seems to be focused on the fact that the county approved the plat of the subdivision in question. The two purposes of subdivision plat approval requirements are "the enforcement [of] land use and road construction standards, and the identification of property ownership for tax purposes." 36 D. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 43.1 (Texas Practice 1989); *see Trawalter v. Schaefer*, 179 S.W.2d 765, 767 (Tex. 1944) (statutory predecessor to section 232.002 of Local Government Code construed as requiring plat containing "sufficient data to enable the taxing authorities to correctly carry the land on the tax rolls and avoid duplicate or double renditions of the same land"). The commissioners court's approval of a plat under section 232.002 is regulatory rather than contractual and does not in itself obligate the county to maintain roads or other features even when those features have been dedicated to the public. Upon receipt of a plat that complies with all requirements of the law, the commissioners court has a ministerial duty to approve and file the plat, but the fact that the approved plat undertakes to dedicate streets and roads does not obligate the county to maintain those streets and roads. *Commissioners' Ct. v. Frank Jester Dev. Co.*, 199 S.W.2d 1004, 1007 (Tex. Civ. App.--Dallas 1947, writ ref'd n.r.e.). Such a "dedication is a mere offer and the filing does not constitute an acceptance of the dedication." *Langford v. Kraft*, 498 S.W.2d 42, 49 (Tex. Civ. App.--Beaumont 1973, writ ref'd n.r.e.); *cf. State v. Clark*, 336 S.W.2d 612, 614 (Tex. 1960) (until there has been acceptance by city, dedication of land for park purposes may be withdrawn or modified). The facts you present do not even

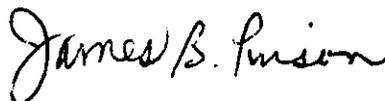
show that the drainage ditch in question has been dedicated, much less accepted by the county.¹

We conclude that the facts you present do not support a legal obligation on the part of the county to prevent the flooding of the private land.

S U M M A R Y

Bell County is not responsible for maintenance of a drainage ditch on private land reflected in a rural subdivision plat approved by the commissioners court, where the ditch has not been dedicated to public use and never has been maintained by the county and where flooding from the ditch is not the result of drainage from, or improvements to, a county road.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

¹We do not attempt to determine whether the drainage ditch in question could be dedicated effectively in any event. *But see Drye v. Eagle Rock Ranch, Inc.*, 364 S.W.2d at 204 & n.6 (law does not recognize dedication to use of limited number of persons).