



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 16, 1997

The Honorable Lane Arthur  
Coke County Attorney  
P.O. Box 55  
13 East 7th Street  
Robert Lee, Texas 76945

Letter Opinion No. 97-084

Re: Whether a county commissioners court may expend county funds for the construction, improvement, maintenance, or repair of streets within a municipality (ID# 39287)

Dear Mr. Arthur:

You ask whether a county commissioners court has authority under section 251.012 of the Transportation Code to call a bond election and to expend county bond funds for the construction, improvement, maintenance, or repair of a street or alley within a municipality that is not an extension of an existing county road. You explain that two small cities within Coke County need extensive street repairs on streets that are not extensions of existing county roadways. These cities, you state, desire the county to assume the cost of improving and maintaining such streets through the issuance of bonds pursuant to section 251.012. You suggest that a commissioners court's authority to expend county moneys is limited to city streets that are part of the county road system. We agree.

Section 251.012 of the Transportation Code provides in relevant part as follows:

(a) With the approval of the governing body of a municipality, the commissioners court of a county may spend county money to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located in the municipality . . . .

Transportation Code section 251.012 is a non-substantive recodification of former Texas Civil Statutes, article 6702-1, section 2.010,<sup>1</sup> which the legislature enacted in 1985.<sup>2</sup> In Attorney General Opinion JM-892, this office determined that the authority granted to a county under section 2.010 is limited to a street or alley that is an integral part of the county roads or highways or a

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<sup>1</sup>See Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 1, 25, 1995 Tex. Gen. Laws 1025, 1154, 1871 (repealing V.T.C.S. article 6702-1, the County Road and Bridge Act, enacting Transportation Code section 251.012, and providing that "[t]his act is intended as a recodification only, and no substantive change in law is intended by this Act.").

<sup>2</sup>See Act of May 27, 1985, 69th Leg., R.S., ch. 625, § 1, 1985 Tex. Gen. Laws 2323, 2323 (providing that the County and Road and Bridge Act, V.T.C.S. article 6702-1, is amended by the addition of section 2.010).

connecting link therewith. Attorney General Opinion JM-892 (1988) at 9.<sup>3</sup> This conclusion was based on the premise that section 2.010 codified in part the well-established common-law rule that a county may exercise limited authority over city streets provided the city consents, and provided further, that such streets form an “integral part”<sup>4</sup> of or a “connecting link”<sup>5</sup> with the county road system.<sup>6</sup>

The common-law requirement that a city consent to the county’s work on city streets was derived from the respective jurisdictions of a county and a city over roads and streets conferred by the general laws.<sup>7</sup> Both general-law and home-rule cities have exclusive control and power over their streets, alleys and public highways. Transp. Code §§ 311.001 (home-rule municipality has exclusive control over highways, streets, and alleys of municipality), .002 (general-law municipality has exclusive control over highways, streets, and alleys of municipality); Attorney General Opinions JM-892 (1988) at 8, H-1018 (1977) at 2. This municipal authority prevails over the authority conferred on a commissioners court by the general laws with respect to public roads and highways in a county.<sup>8</sup> Thus, incorporation of a city within a county removes the power of the commissioners court to construct or maintain roads within the city boundaries.<sup>9</sup>

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<sup>3</sup>No amendments were made to former V.T.C.S. article 6702-1, section 2.010 (enacted in 1985) prior to its codification in the Transportation Code in 1995.

<sup>4</sup>See Attorney General Opinion H-1018 (1977) at 3 (defining “integral part of county road system” as part necessary or essential to complete whole, thus including streets forming extensions of or completing gaps within city limits of county roads).

<sup>5</sup>See *id.* (defining “connecting link” as city streets that connect two county road highways without need to travel over any other highway except city streets in question and thus including streets within city that provide route for traveling from one county highway to another); see also *City of Piney Point Village v. Harris County*, 479 S.W.2d 358, 367 (Tex. Civ. App.--Houston [1st Dist.] 1972, writ ref’d n.r.e.) (rationale in *Breckenridge, Hughes*, see *infra* note 6, would authorize counties to construct streets in cities that *tie* into a county road).

<sup>6</sup>*City of Breckenridge v. Stephens County*, 40 S.W.2d 43, 43-44 (Tex. 1931); *Edwards v. Dallas County*, 232 S.W.2d 262, 265 (Tex. Civ. App.--Dallas 1950, no writ); *Hughes v. County Commissioners Court of Harris County*, 35 S.W.2d 818, 820, 823-24 (Tex. Civ. App.--Galveston 1931, no writ); see also Attorney General Opinions JM-892 (1988), H-1018 (1977), H-345 (1974), M-561 (1970), WW-1401(1962), V-971 (1949), V-484 (1948), V-261(1947), O-7465 (1946), O-4256 (1941).

<sup>7</sup>See *Breckenridge*, 40 S.W.2d at 44-45; *Smith v. Cathey*, 226 S.W. 158, 159-60 (Tex. Civ. App.--Dallas 1920, no writ); Attorney General Opinion V-484 (1948) at 4 (discussing statutory predecessors of Transp. Code §§ 251.051(a)(1), 311.001, .002; Local Gov’t Code § 81.028(3), (5)).

<sup>8</sup>*Smith*, 226 S.W.2d at 160; Attorney General Opinion H-1018 (1977) at 2; see also Local Gov’t Code §§ 81.028(2) (commissioners court may lay out, establish public roads and highways), .028(5) (commissioners court may exercise general control over all roads and highways in county); Transp. Code § 251.051(a)(1) (commissioners court shall order that public road be laid out, closed, abandoned).

<sup>9</sup>*Harrison County v. City of Marshall*, 253 S.W.2d 67, 69 (Tex. Civ. App.--Fort Worth 1952, writ ref’d). A  
(continued...)

The derivation of the common-law “integral part/connecting link” requirement is less clear.<sup>10</sup> In the leading case, *City of Breckenridge v. Stephens County*, the Texas Supreme Court recognized and affirmed the paramount jurisdiction of cities and towns over their streets and highways but stated “where the improvement is made with the consent or approval of the city we find no statutory or constitutional impediment” to county improvement of a road within the city. 40 S.W.2d 43, 44 (Tex. 1931). More importantly, relying on article III, section 52(b) of the Texas Constitution, the *Breckenridge* court held that a county had authority to expend county road bond funds for improvement of city streets if the streets form integral parts of the county roads or state highways. *Id.*

Article III, section 52(b) authorizes counties, other political subdivisions of the state, “or any defined district now or hereafter to be described . . . which may or may not include, towns, villages or municipal corporations” to issue bonds for, among other purposes, the construction and maintenance of roads, payable from taxes levied and collected in the district or applicable territory. The *Breckenridge* court looked at this language and reasoned that if a municipality is an “integral part” of a road district, the property of the municipality is clearly subject to road district taxes, just as is the property of the district located outside the municipality. *Id.* Given the foregoing, the court continued, the commissioners court has, by the express provisions of the constitution, the right to expend road district bond funds on such city streets “where such streets are parts of and form connecting links in county or state highways.” *Id.* Similarly, the court stated, where road bonds are voted by the entire county, the incorporated cities and towns located in the county are clearly integral parts of the county, and all of the property in the county is subject to taxation for the payment of the county road bonds. *Id.* Thus, a commissioners court has the authority to spend county road bond funds on *county* roads and highways in any part of the county. *Id.* The court concluded that if a street in an incorporated city or town “forms a connecting link in the county road or state highway, we think it is a county road within the meaning of the statutes<sup>11</sup> to the extent that county funds may be spent for the improvement thereof.” *Id.* (footnote added).

Although Transportation Code section 251.012 requires the approval of the city’s governing body for a county to improve or maintain a city street, it does not require that the street form an integral part of or be connected to county roads. While acknowledging that former section 2.010 did

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<sup>9</sup>(...continued)

county, however, has control over the streets and alleys within a municipality that does not have “an active de facto municipal government.” Transp. Code § 251.051(a)(2); see also Attorney General Opinion M-561 (1970) at 2 (discussing predecessor to section 251.051(a)(2)). Additionally, in a Type B general-law city municipality, the commissioners court may improve a street that is a continuation of a county road. Transp. Code § 311.006(1).

<sup>10</sup>See *infra* note 14.

<sup>11</sup>It appears that “the statutes” the court was referring to were the general provisions conferring authority on a commissioners court over public roads and highways in the county, and more specifically, V.T.C.S. article 726, authorizing issuance of county road bonds pursuant to article III, section 52(b). See *City of Breckenridge v. Stephens County*, 26 S.W.2d 405 (Tex. Civ. App.—Eastland 1930, writ granted), *rev’d*, 40 S.W.2d 43 (Tex. 1931) (discussing applicable statutes).

not expressly impose the “integral part/connecting link” requirement, this office stated in Attorney General Opinion JM-892:

We note, however, that upon its original enactment, the County Road and Bridge Act<sup>12</sup> did not purport to expand the powers of the commissioners court. Rather, it was merely intended as a revision of the laws concerning county roads and bridges. Acts 1983, 68th Leg., ch. 288, [1983 Tex. Gen. Laws] at 1431 (caption). We are constrained to interpret section 2.010 in that light. Accordingly, the commissioners court of a county may spend county funds to finance the construction of a street or alley located within the boundaries of an incorporated city or town in a manner provided in section 2.010 if the governing body of the city or town consents and the street or alley is an integral part of the public roads or highways of the county or a connecting link therewith.

Attorney General Opinion JM-892 (1988) at 9 (emphasis in original) (footnote added). No court appears to have construed former section 2.010 or to have addressed a commissioners court’s authority to expend funds on city streets since 1988 when this office issued Attorney General Opinion JM-892.

Although we find the construction of former section 2.010 in Attorney General Opinion JM-892 problematic,<sup>13</sup> we nevertheless adhere to its conclusion. Interpreting former section 2.010 to incorporate the integral part/connecting link requirement avoids constitutional questions<sup>14</sup> that have

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<sup>12</sup>See *supra* note 2.

<sup>13</sup>We believe the construction of former section 2.010 in Attorney General Opinion JM-892 is problematic because there is no indication that the legislature either considered or intended the integral part/connecting link requirement to apply. See Hearing on S.B. 513 Before Senate Comm. on Intergovernmental Relations, 69th Leg. (May 7, 1985) (comments of sponsor Senator Sarpalius that bill would allow county to spend money on city-owned roads, giving example of largest city in county in which half of streets are unpaved); House Comm. on County Affairs, Bill Analysis, C.S.S.B. 513, 69th Leg. (1985) (Background Information) (bill would allow county with city’s consent to spend funds to upgrade, maintain, or repair city roadways). The legislature enacted former section 2.010 in 1985, substantially after the formulation of the rule with respect to a county’s authority over city streets and the adoption of the County Road and Bridge Act. Former section 2.010 by its plain language authorized a commissioners court to expend county funds for city streets. We do not believe that the fact that former section 2.010 was added to the County Road and Bridge Act, which when originally enacted may have been intended merely as revision of the laws concerning *county* roads, mandates an interpretation of section 2.010 as only dealing with county roads notwithstanding the plain language of the statute.

<sup>14</sup>Expenditure of county funds to improve city streets unconnected with county roads would appear to implicate lending of credit concerns under Texas Constitution article III, section 52(a), among others. See *Harris County Flood Control Dist. v. Mann*, 140 S.W.2d 1098, 1104 (Tex. 1940) (county may not grant county funds to flood control district). Additionally, such expenditures, if derived from county road bond proceeds or taxes authorized under article III, sections 52(b) and (c), would appear to be prohibited under such provisions based on the holding in *Breckenridge*. See (continued...)

not been addressed by the courts,<sup>15</sup> the resolution of which we cannot predict. See Gov't Code § 311.021(1) (in construing statutes, presume that compliance with state constitution intended).

Based on the foregoing, we conclude that the Coke County Commissioners Court is not authorized under section 251.012 to expend county moneys to construct, improve, repair, or maintain streets in an incorporated city<sup>16</sup> that are not integral parts of, or connecting links with, the county road system.<sup>17</sup> Given our conclusion, we do not consider whether section 251.012 is sufficient authority in itself to call a bond election and issue bonds.<sup>18</sup>

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<sup>14</sup>(...continued)

*Breckenridge*, 40 S.W.2d at 44 (may use bond proceeds for county roads under article III, section 52(b)); see also *William v. Carroll*, 182 S.W. 29, 35 (Tex. Civ. App.--Beaumont 1916, writ granted), modified, 202 S.W. 504 (Tex. 1918) (general county taxes levied under article VIII, section 9, limited to streets that are continuations of county roads). Finally, improvement and maintenance of city streets unrelated to county roads may not constitute "county business" under article V, section 18. See *Sun Vapor Electric Light Co. v. Kenan*, 30 S.W. 868 (Tex. 1895) (holding that powers which may be required of commissioners court confined to county business and administration of assets of a dissolved corporation not county business); *Mann*, 140 S.W.2d at 1105 (provision impliedly prohibits legislature from requiring commissioners court to perform duties that are not "county business," but holding that it did not prohibit legislature from committing to commissioners court affairs of conservation and reclamation district created under Tex. Const. art. XVI, § 59).

<sup>15</sup>We note that in *Breckenridge*, the court assumes that a commissioners court has authority only over *county roads*. See *Breckenridge*, 40 S.W. 2d at 44. It is unclear whether this was premised on statutory or constitutional powers of a county (limited to county roads) or on the fact that the funds at issue were derived from bonds voted and authorized as *county road* bonds. In any case, the court looked at article III, section 52(b), as a basis for determining that a county had authority to expend county taxes on county roads notwithstanding that such roads were within the corporate limits of an incorporated city. *Id.* The court's conclusion that if a street forms a link with or is part of a county road, then the street itself is a *county road* for the purposes of the "statutes," made it unnecessary for the *Breckenridge* court to address the constitutional issues, see *supra* note 14, implicated in the expenditure of county funds for purely municipal streets.

<sup>16</sup>You do not indicate, but we assume, that each of the cities in question has "an active de facto municipal government." See *supra* note 9.

<sup>17</sup>Your question suggests that the county commissioners could expend county funds for the streets in question if the streets were part of a road district created pursuant to Texas Constitution article III, section 52(b). You do not ask and we do not consider whether streets in an incorporated city that are not "integral parts" of or "connecting link" with county roads may be improved or maintained by the commissioners court with road district bond funds. See *Breckenridge*, 40 S.W.2d at 44 ("If a city or town is a part of a road district, the commissioners' court has the right by the very express provisions of the Constitution to expend road district bond funds on such town or city streets *where such streets are parts of and form connecting links in county or state highways.*") (emphasis added); *Edwards*, 232 S.W.2d at 264 (road district bond funds to be spent for projects that connect with county roads).

<sup>18</sup>Section 251.012 does not expressly authorize calling a bond election or the issuance of bonds for all the purposes listed.

**S U M M A R Y**

A commissioners court does not have authority under section 251.012 to expend county funds for the construction, improvement, or repair of a street or alley, within an incorporated municipality, that is not an "integral part" of or a "connecting link" with the county roads or highways.

Yours very truly,

A handwritten signature in cursive script that reads "Sheela Rai".

Sheela Rai  
Assistant Attorney General  
Opinion Committee