



September 24, 1999

Ms. Alice L. Chapman
Uvalde County Auditor
Courthouse Plaza #4
100 North Getty Street
Uvalde, Texas 78801

Opinion No. JC-0116

Re: Whether a commissioners court must vote
unanimously to close a public road that is not a
through street (RQ-0059)

Dear Ms. Chapman:

You ask whether the closure of a public road which, in this instance, is a cul-de-sac rather than a through street, requires a unanimous vote of the commissioners court. It does.

As you correctly note, section 251.051 of the Transportation Code reads in pertinent part:

(b) A unanimous vote of the commissioners court is required to:

(1) close, abandon, or vacate a public road;

....

TEX. TRANSP. CODE ANN. § 251.051(b)(1) (Vernon 1999).

Nothing in the statutory language here distinguishes a cul-de-sac from a through road. Nor is such a distinction to be found in section 251.002 of the Transportation Code, the definition of public roads: "A public road or highway that has been laid out and established according to law and that has not been discontinued is a public road." *Id.* § 251.002. *See Decker v. Menard County*, 25 S.W. 727, 728 (Tex. Civ. App.—1894, no writ) (cul-de-sac may be public road).

We note that this office, in Attorney General Opinion H-166 (1973) held that the statutory predecessor of section 251.051 did not require a unanimous vote of the commissioners court to close a road, on the ground that "discontinuance" was distinguishable from change or alteration. Whatever force Opinion H-166's argument may have had when the opinion was issued has been vitiated by the explicit language of section 251.051 with respect to road closing, and accordingly Attorney General Opinion H-166 has been overruled by operation of law.

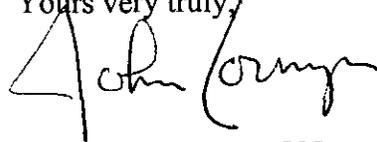
Accordingly, if the cul-de-sac in question is a public road within the meaning of section 251.002, then the plain language of section 251.051(b)(1) requires a unanimous vote of the

commissioners court for its closing. Whether that be the case is, of course, a question of fact about which we do not opine.

S U M M A R Y

The closing of a public road, whether a cul-de-sac or a through street, requires a unanimous vote of the commissioners court. Attorney General Opinion H-166 (1973) is overruled.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn". The signature is written in a cursive style with a large initial "J" and "C".

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

James E. Tourtelott
Assistant Attorney General - Opinion Committee