



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2009

The Honorable Jim Pitts
Chair, Committee on Appropriations
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. GA-0722

Re: Whether the phrase “cut of a county road” in
Local Government Code section 240.907 includes
boring under the road (RQ-0776-GA)

Dear Representative Pitts:

Your predecessor as Chair of the Committee on Appropriations requested an opinion interpreting Texas Local Government Code section 240.907, which authorizes counties to impose a fee on persons who cut a county road.¹ *See* TEX. LOC. GOV'T CODE ANN. § 240.907 (Vernon 2005). A person or entity that cuts a county road to lay a pipeline or other line is responsible for repairing the cut or paying the county for the repair. *See* SENATE RESEARCH CENTER, BILL ANALYSIS, Tex. H.B. 1610, 79th Leg., R.S. (2005) at 1.² Because the cuts weaken the road, causing higher maintenance costs for the county, the Legislature adopted section 240.907 to provide funds for the additional maintenance resulting from the cut and repair. *See id.*

Your predecessor asked whether section 240.907 applies to activities that bore or tunnel under a road without cutting the surface. *See* Request Letter at 1–2. Section 240.907 provides in part:

(b) To provide funds for the future inspection, repair, and maintenance of a cut road, a county may impose a fee on a person or other entity for each *cut of a county road* during or as an incident to the installation, maintenance, or repair of any facilities or properties of the person or entity.

TEX. LOC. GOV'T CODE ANN. § 240.907(b) (Vernon 2005) (emphasis added). The fee may not exceed \$500, and it “is in addition to any other charge the county is authorized to impose to repair damage to the road because of the cut.” *Id.* § 240.907(c)(1), (3).

¹*See* Request Letter at 1 (Jan. 12, 2009) available at <http://www.texasattorneygeneral.gov>.

²Local Government Code section 240.907 was adopted by House Bill 1610. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 957, § 1, 2005 Tex. Gen. Laws 3227.

Courts will determine and give effect to the Legislature's intent as expressed by the plain and common meaning of the statute's words. See *F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 683 (Tex. 2007); *Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004). "Words and phrases shall be read in context and construed according to the rules of grammar and common usage," and words or phrases that have acquired a technical or particular meaning by legislative definition shall be construed accordingly. TEX. GOV'T CODE ANN. § 311.011 (Vernon 2005). In section 240.907, "a cut of a county road means the act of excavating or cutting *the surface* of a county road." TEX. LOC. GOV'T CODE ANN. § 240.907(a) (Vernon 2005) (emphasis added). In this definition, both "excavating" and "cutting" have "surface of a county road" as their object. See MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 855 (11th ed. 2004) ("object," definition 5(a), means a noun "denoting the goal or result of the action of a verb"). The word "cut" has been defined as "to divide into parts with an edged tool," while "excavate" has been defined as "to form a cavity or hole in." *Id.* at 308 (definition 3(b)(1)), 434 (definition 1). Section 240.907 thus applies to activities that sever the road surface. See generally *Tex. Att'y Gen. Op. No. MW-189* (1980) at 1 (addressing the power of a municipal utility district to make open cuts across county roads for water lines instead of being restricted to boring under the roads). The language of the statute does not apply to activities that do not open up the surface of the road. We conclude that Local Government Code section 240.907 does not authorize counties to impose a fee on a person or other entity for activities that bore or tunnel under a county road without opening up the surface of the road.

S U M M A R Y

Texas Local Government Code section 240.907 authorizes counties to impose a fee not to exceed \$500 on a person or entity for each cut of a county road during or as an incident to the installation, maintenance, or repair of a person's or entity's facilities or properties. A county may impose the section 240.907 fee for the activities of excavating or cutting the surface of a county road but not for activities that bore or tunnel under a county road without cutting the road surface.

Very truly yours,



GREG ABBOTT
Attorney General of Texas

ANDREW WEBER
First Assistant Attorney General

JONATHAN K. FRELS
Deputy Attorney General for Legal Counsel

NANCY S. FULLER
Chair, Opinion Committee

Susan L. Garrison
Assistant Attorney General, Opinion Committee