



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2020

The Honorable Lilli A. Hensley
Sterling County Attorney
Post Office Box 88
Sterling City, Texas 76951

Opinion No. KP-0311

Re: Whether a county may call a bond election to fund the construction, repair, improvement, and maintenance of city roads (RQ-0319-KP)

Dear Ms. Hensley:

You ask whether a county has authority to call a bond election pursuant to article III, section 52 of the Texas Constitution and use the funds “for the construction, repair, improvement, and maintenance of city roads without buying the city roads or having the city disincorporate[.]”¹ As background, you tell us that every road in Sterling City (the “City”) needs some level of repair, recondition, or reconstruction. *See* Request Letter at 1. You also tell us the City does not have the necessary equipment or financial resources for the extensive amount of work required. *See id.* You state that the City asked Sterling County (the “County”) to call a bond election for the county to fund the street construction and repair in the City. *See id.*

You call our attention to a 1931 judicial opinion, *City of Breckenridge v. Stephens County*, in which the Texas Supreme Court determined article III, section 52(b) authorized Stephens County to issue bonds with respect to county roads, and that roads located in a city could constitute such if integral to a county road. *See* Request Letter at 2; *see also City of Breckenridge v. Stephens Cty.*, 40 S.W.2d 43, 43–44 (Tex. 1931). In light of certain statutory changes subsequent to the *Breckenridge* opinion you question whether article III, section 52(b) still imposes the “integral part of or a connecting link” requirement. Request Letter at 2.

Given the jurisdiction of counties and cities over their respective roads and streets,² some variant of your question has been the subject of judicial and attorney general opinions since Texas’s earliest days. *See* Report and Opinions of Attorney General 1914–1916 at 728. It is well

¹Letter from Honorable Lilli A. Hensley, Sterling Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Dec. 10, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²“Under the common law, ‘road’ and ‘street’ have distinct meanings. A ‘road’ is a county highway forming a communication between the city limits of one city or town and the city limits of another city or town, while a ‘street’ is a passageway within the bounds of a municipality.” Tex. Att’y Gen. Op. No. JC-0036 (1999) at 1 (citing *Williams v. Carroll*, 182 S.W. 29, 35 (Tex. App.—Beaumont 1915), *modified on other grounds*, 202 S.W. 504 (Tex. 1918)).

established in Texas law that within the boundaries of a city, the city's authority over its streets generally prevails over the county's authority over county roads. *See State v. Jones*, 18 Tex. 874, 876–80 (1857) (discussing respective authority of city and county over coextensive roads). In the 1931 *Breckenridge* opinion, the Texas Supreme Court examined a county's authority under Texas Constitution article III, section 52(b)(3) to issue bonds for improvements to a street within a city and concluded that “the commissioners’ court does have lawful authority to expend county road bond funds for the improvement of city streets where such streets form integral parts of county roads or state highways, when such improvements are made . . . with [the city’s] consent or approval.” *City of Breckenridge*, 40 S.W.2d at 43–44 (stating further that a commissioners court has authority 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”); *see* TEX. CONST. art. III, § 52(b)(3) (authorizing counties, among other political subdivisions, to issue bonds for the construction and maintenance of roads). Subsequently, numerous attorney general opinions have opined about the integral part/connecting link requirement. *See, e.g.,* Tex. Att’y Gen. Op. Nos. GA-0576 (2007), JC-0036 (1999), JM-892 (1988), H-345 (1974); Tex. Att’y Gen. Op. LO-97-084. In particular, Opinion JC-0036 read the *Breckenridge* opinion to say that “proceeds of bonds issued or taxes levied pursuant to article III, section 52(b) or (c) may . . . be used” only for county roads. Tex. Att’y Gen. Op. No. JC-0036 (1999) at 10–11. Opinion JC-0036 concluded that article III, “section 52(b) and (c) funds may not be used to improve city streets unconnected with county roads under section 251.012” of the Transportation Code. *Id.* at 11.

Subsequent to JC-0036, the Legislature enacted provisions in the Transportation Code and Government Code intending to do away with the integral part/connecting link requirement. *See* House Comm. on Urban Affairs, Bill Analysis, Tex. H.B. 508, 76th Leg., R.S. (1999). First, Transportation Code subsection 251.012(a)(4) authorizes a county to “spend county money to finance the construction, improvement, maintenance or repair” of a municipal street allowed under section 791.032 of the Government Code “if the commissioners court finds that the county will receive benefits as a result of the work.” TEX. TRANSP. CODE § 251.012(a)(4). Second, section 791.032 of the Government Code authorizes an interlocal contract between a city and a local government such as a county to finance the construction, improvement, maintenance, or repair of streets in the municipality, “including portions of the municipality’s streets . . . that are not an integral part of or a connecting link to other roads or highways.” TEX. GOV’T CODE § 791.032. You suggest these provisions indicate that the Legislature “has shifted away from the narrow interpretation” of *Breckenridge*. Request Letter at 2. However, as this office recognized in 2007, these statutes do not “overcome the constitutional requirements imposed upon the use of road bond funds under article III, section 52(b) and (c).” Tex. Att’y Gen. Op. No. GA-0576 (2007) at 2 n.2; *see also Mears v. State*, 520 S.W.2d 380, 382 (Tex. Crim. App. 1975) (“Statutory rules cannot abrogate constitutional requirements.”); Tex. Att’y Gen. Op. No. JC-0036 (1999) at 10 (acknowledging that a statute “cannot amend a constitutional provision”). Therefore, absent amendment to article III, section 52(b) and (c), we conclude, consistent with JC-0036 and GA-0576, that those provisions still require county bond proceeds issued thereunder to be spent on county roads. Accordingly, county bond proceeds under article III, section 52(b)(3) may be used to construct, repair, improve or maintain city streets if the city consents and the streets are an integral part of or a connecting link with a county road or state highway system.

You tell us that “most if not all” streets in the City are integral because they connect to a main thoroughfare. Request Letter at 1. The question whether a particular municipal street is an integral part or a connecting link is a question of fact to be resolved by the county commissioners court in the first instance. *See* Tex. Att’y Gen. Op. No. GA-0576 (2007) at 3. This office has recognized that “[i]f a street is an integral part of a county road or state highway, it need not be a connecting link; conversely, a connecting link need not be an integral part of a county road or state highway.” *Id.* Nothing in the *Breckenridge* opinion suggests that a county must buy the streets in question or that a city must disincorporate to satisfy article III, section 52(b) or (c). Indeed, factually the integral part/connecting link issue would only arise when the roads in question are coextensive, i.e., are within the territory of both the city and the county and subject to the city’s control. Yet, the *Breckenridge* opinion and the opinions following it require only that the coextensive roads be an integral part of or a connecting link to a county road or state highway. *See City of Breckenridge*, 40 S.W.2d at 43–44.

Thus, a county may call a bond election under article III, section 52(b) or (c) and expend bond funds for the construction, repair, improvement, and maintenance of county roads located in a city if the county has municipal consent and it determines that the city streets are an integral part of or a connecting link to a county road or a state highway.³ Having satisfied those requirements, a county need not buy the roads and the city need not disincorporate in order for the county to expend bond proceeds on such city streets.

³You do not specifically ask about Texas Constitution article III, section 52(a). *See* Request Letter at 1–2. Generally, article III, section 52(a) limits public expenditures for private purposes. *See* TEX. CONST. art. III, § 52(a). However, “[a] transfer of funds for a public purpose, with a clear public benefit received in return” does not violate this prohibition. *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995). “[P]olitical subdivisions may assist each other only if the funds granted by one political subdivision to another are used for a definite public purpose of the granting subdivision.” Tex. Att’y Gen. Op. No. JC-0036 (1999) at 5. In other words, a county may assist a city if the commissioners court determines the expenditure accomplishes a county purpose. *Id.* Assuming the commissioners court here determines the city streets are an integral part or connecting link, the expenditure of county bond proceeds likely also satisfies the county purpose requirement under article III, section 52(a). *See id.* at 6 (acknowledging that “an expenditure of county funds to improve a city street that is an integral part of or a connecting link with county roads serves a county purpose because such a street is a county road”).

S U M M A R Y

A county may call a bond election under Texas Constitution article III, section 52(b) or (c) and expend bond funds for the construction, repair, improvement, and maintenance of city streets if the county has municipal consent and determines that the city streets are an integral part of or a connecting link to a county road or a state highway. Having satisfied those requirements, a county need not buy the roads and the city need not disincorporate in order for the county to expend bond proceeds on such city streets.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
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