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OPINION COMMITTEE

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RQ-0237-JC

Hon. John Cornyn
Texas Attorney General
Opinion Committee
P. O. Box 12548
Austin, TX 78711-6538

RE: Whether or not the commissioner's court of a county has the authority to enact a name change for a county or public road once a name has already been adopted or established.

Dear Sir,

Callahan County Judge Roger Corn has requested I request an opinion from the Attorney General's Office regarding a matter which has come before the Callahan County Commissioner's Court. The facts are set out below.

On April 24, 2000 the Commissioner's Court of Callahan County received a petition requesting the court to change the name of Hay's Road, located just west of Clyde, Texas in Callahan County, renaming it Dugan Road. Notice was posted at the courthouse that the petition would be heard the following session held on May 8, 2000. The petition was heard and the court determined to table the motion until the next session and post notice in the local newspaper that public comment would be heard two weeks later.

In the interim the county received many faxes, e-mails and letters expressing opinions both for and against the change. The county also received a letter from an attorney's office challenging the authority of the commissioner's court to enact such a change citing Texas Transportation Code sec. 251.013. Judge Corn contacted the Texas Association of Counties and John Fuller at the Texas Attorney General's Office regarding the authority of the court. The Judge was informed that there was no law on the point to serve as guidance.

On May 8, 2000 court convened and heard public comment on the matter. Several citizens appeared some supporting and others opposing the name change. A motion was made to change the name to Hays-Dugan Road, seconded, and put to a vote. The commissioner's court voted 2-2 on the motion and the County Judge declined to vote, announcing his intent to request this opinion.

No one is able to determine when or how Hays Road acquired its name except by common usage. I have searched the commissioner's court minutes as have the county clerk, County Commissioner Harold Hicks, and the county court administrator. We have not been able to find any reference to the commissioner's court having adopted the name Hays Road for the road. However, it is shown on county 911 maps as Hays Road, the mailing addresses are recorded as Hays Road by the post office, and the highway department has posted exit signs on the interstate referencing Hays Road.

The question is whether or not the commissioner's court of a county has the authority to enact a name change for a county or public road once a name has already been adopted or established by common usage.

Statutory Law

The constitutional authority of county commissioners courts in Texas is derived from the Texas Constitution Art. 5, Sec. 1. **Judicial power; courts in which vested** which states "Sec 1. The judicial power of this State shall be vested in ...Commissioners Courts..."

The commissioners court's authority over public roads is granted in the Texas Transportation Code, Subchapter B. **Establishing and Closing Roads**. Sec. 251.051, entitled General Authority of Commissioners Courts states:

- (a) The commissioners court of a county shall:
 - (1) order that public roads be laid out, opened, discontinued, closed, abandoned, vacated, or altered; and
 - (2) assume control over streets and alleys in a municipality that does not have an active de facto municipal government....

The authority to name a public road is provided in Tex. Trans. Code. sec. 251.013, Road Names and Address Numbers and reads:

- (a) The commissioners court of a county by order may adopt uniform standards for naming public roads wholly or partly in unincorporated areas of the county and for assigning address numbers to property located in unincorporated areas of the county. The standards apply to any new public road that is established.
- (b) The commissioners court by order may adopt a name for a public road located wholly or partly in an unincorporated area of the county and may assign address numbers to property located in an unincorporated area of the county for which there is no established address system.

(d) A commissioners court may adopt an order under this section only after conducting a public hearing on the proposed order. The court shall give public notice of the hearing at least two weeks before the date of the hearing.

A public road is defined in Tex. Trans. Code. sec 251.002 as "A public road or highway that has been laid out and established according to law and has not been discontinued."

After an extensive search on the point I have been unable to locate any case law addressing this matter. I have been in contact with the Attorney General's Intergovernmental Affairs office and the Opinion sections. They have been unable to locate any case law or opinions interpreting the statute. The Texas Association of Counties has been likewise unsuccessful. This would be a case of first impression.

Thank you for your consideration of this matter.

Sincerely,


Allen Wright
Callahan County Attorney