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November 7, 2000

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FILE # ML-41746-00
I.D. # 41746

OPINION

The Honorable John Cornyn
Attorney General, State of Texas
Attn: Opinion Committee Chairperson
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Cornyn:

I am requesting a formal opinion from your office on the following question:

Whether a county may charge an applicant for the costs incurred by the county when the county, pursuant to Section 232.041(b) of the Texas Local Government Code, publishes and mails a notice stating that an application has been filed for the replatting of a subdivision, or whether the county must bear the expense of providing such notice.

The County of El Paso is located on the United States/Mexico border; therefore, Chapter 232, Subchapter B of the Texas Local Government Code applies to the platting and replatting of subdivisions of land used for residential purposes. In El Paso County, any revision of a plat must be approved by the County Commissioners Court. However, before a court can approve a plat revision, the court must issue a notice indicating that the court is to consider the revision. Section 232.041(b) states:

After the application is filed with the commissioners court, the court shall publish a notice of the application in a newspaper of general circulation in the county. The notice must include a statement of the time and place at which the court will meet to consider the application and to hear protests to the revision

The Honorable John Cornyn
November 7, 2000
Page 2

of the plat. The notice must be published at least three times during the period that begins on the 30th day and ends on the seventh day before the date of the meeting. If all or part of the subdivided tract has been sold to nondeveloper owners, the court shall also give notice to each of those owners by certified or registered mail, return receipt requested, at the owner's address in the subdivided tract. [emphasis added]

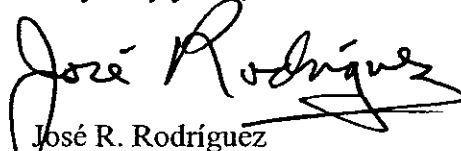
This provision imposes a duty on a county to provide notice, yet there is no express provision that allows a county to require the applicant to cover the costs of issuing such notice. In fact, there is no provision allowing a county to charge a fee even when an applicant requests the approval for an initial plat that establishes a subdivision. Under Subchapter A, a commissioners court is instructed to refund at least half of the application fee or deposit if it fails to take a final action on a plat application. TEX. LOCAL GOV'T CODE ANN. §232.0025(i) (Vernon 2000). That a county is authorized to charge a fee in the first place is therefore implied. But Subchapter B does not contain a similar provision for refunding an application fee.

The underlying question, then, is whether a county has the implied authority to require that the applicant who makes a request under Subchapter B cover the costs of providing notice. There is, of course, the general rule that express authority is not necessary for a commissioners court to issue an order so long as the order is reasonably necessary to act under some authority granted by a statute or the Constitution. In this situation, the El Paso County Commissioners Court not only is granted authority by statute to issue notice, it is mandated to do so. The County of El Paso would argue that it has the implied authority to require that applicants for subdivision revisions and replats cover the cost of providing the notice required in Section 232.041(b) of the Texas Local Government Code.

The cost of providing such notice is substantial. As old subdivisions are replatted to conform to the new subdivision standards imposed by Chapter 232, Subchapter B of the Texas Local Government Code, the cost burden to El Paso County will become unmanageable unless the burden is borne by the applicant seeking the revision. We request your opinion clarifying whether the County of El Paso has the authority to charge an applicant for the costs of issuing such notice.

I thank you in advance for your assistance in this regard.

Very truly yours,


José R. Rodríguez
El Paso County Attorney