



**Frank Madla**

Texas State Senate  
District 19

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November 26, 2001

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OFFICE OF THE ATTORNEY GENERAL  
EXECUTIVE ADMINISTRATION

**1552**

The Honorable John Cornyn  
Office of the Attorney General  
300 West 15th Street  
Austin, Texas 78701

Re: Request for Opinion regarding the authority of a county commissioners' court or its members to expend county funds to maintain a road not designated as a county road.

Dear General Cornyn:

As Chairman of the Senate Committee on Intergovernmental Relations, I respectfully request an Attorney General's Opinion on the following question:

- (1) Does a county commissioner or county commissioners' court possess the authority to obligate or expend public funds to construct, improve, or maintain a road which has been accessible to and regularly used by the public, but which has not been officially designated as a county or otherwise "public" road?*

**FACTS**

Sections 251.002 and 251.003(a) of the Texas Transportation Code provide as follows:

**251.002. 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.

**251.003. Construction and Maintenance of Public Roads**

(a) The commissioners court of a county may:

- (1) make and enforce all necessary rules and orders for the construction and maintenance of public roads;
- (2) hire the labor and purchase the machinery and equipment needed to construct and maintain public roads; and
- (3) use any necessary material most convenient to build, repair, or maintain public roads,



regardless of the location or extent of the material.

### **ISSUE**

Under Chapter 251, Transportation Code, which delineates general county authority over roads and bridges, it appears evident that a commissioners' court may promulgate and enforce rules and orders necessary for the construction and maintenance of public roads.

Further, Chapter 252 authorizes a commissioners' court to vest individual commissioners with the authority to obligate funds and make designations regarding the roads in the district they represent. In the absence of a commissioners' court order prescribing the inclusion of a road into the county road system, and therefore eligible for county maintenance, a commissioner, acting as ex-officio road commissioner /supervisor, makes the determination as to what roads will be constructed, maintained, or improved with county funds.

Finally, traffic, like human nature, often takes the path of least resistance and uses the quickest route from point A to point B. Often, especially in rural areas, this results in roads, not having yet been designated public, being used by the public. This is often beneficial to the landowner, the residents of the county and its commissioners' court.

The problem arises in the fact that Section 251.02, Transportation Code, defines a "Public Road" as "a public road or highway that has been laid out and established according to law and that has not been discontinued" without specifying what laws can effect the designation of a road as public, and therefore whether or not the county can obligate funds to maintain those roads.

The ability to provide an adequate system of roads to the public is an important function of county government. If this can be done with a minimum obligation of county resources, it would seem that everyone benefits. Expending dollars to surface and maintain a private road that, historically, everyone in the area has used to get from County Road A to County Road B is certainly less costly than cutting a new road and keeping it maintained, but such a practice without a clear picture of its compliance with current law and the rights and responsibilities of all parties involved is questionable.

Therefore, I am requesting a letter of opinion to clarify whether or not a county commissioner or county commissioners' court possess the authority to obligate or expend public funds to construct, improve, or maintain a road which has been accessible to and regularly used by the public, but which has not been officially designated as a county or otherwise "public" road.

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I would appreciate your prompt consideration of this request. Please do not hesitate to contact me or Jason Anderson on my staff should you have questions or require additional information.

Yours truly,



Frank Madla

FM/ja