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OPINION COMMITTEE

RQ-0290-GA

November 4, 2004

Office of the Attorney General for the State of Texas
ATTN: Opinions Committee Division
P.O. Box 12548
Austin, TX 78711

FILE # MC-44010-04
I.D. # 044010

RE: The effect of Transportation Code Chapter 253 and county subdivision regulations on a subdivision road which is situated partially within an incorporated city and the remainder of which is situated within the ETJ of that city.

Dear General Abbott:

The Caldwell County Commissioners Court met in regular session on October 11, 2004 to discuss a request from a group of citizens residing in the Skyview Subdivision for Caldwell County to improve the road in their subdivision to bring it up to County specifications, for the County to assume responsibility for future maintenance of the road and to assess the cost of improving the road against the various property owners in the subdivision served by the road.

Caldwell County has a duly enacted subdivision ordinance, last amended on April 22, 2002, which includes provisions for the County to take such actions as have been requested. The ordinance makes reference to Art. 6702-3, TEX. REV. CIV. STAT. ANN., now Texas Transportation Code Chapter 253.

The subdivision and road in question, Skyview Subdivision, are located partially within the city limits of the City of Martindale, an incorporated class A city within Caldwell County, Texas. The balance of the subdivision and road are located outside the city limits of Martindale but within the Extra Territorial Jurisdiction of the City of Martindale. To further complicate matters, the City of Martindale has no street department. It has entered into an interlocal agreement with Caldwell County for the maintenance of its streets and pays the County accordingly.

COUNTY'S SUBDIVISION REGULATIONS

The County's Subdivision regulations contain provisions that provide as follows:

- 7.3 If the residents of the subdivision cannot bring the roads and drainage into compliance with County standards, the Commissioners Court will entertain a request to improve the roads to current County standards (as provided by Art. 6702-3, TEX. REV. CIV. STAT. ANN.) and assess the cost of the improvements against the subdivision residents, as follows:
- 7.3.1 Any resident of the subdivision may request the Precinct Commissioner to place an item on the Court's agenda to consider improvements and an assessment.
- 7.3.2 If the Court finds that there is substantial interest among the residents of the subdivision, it will set a public hearing and give notice of the hearing as provided by law.
- 7.3.3 If the Court determines at the public hearing that the improvement is necessary for the public health, safety or welfare of the residents of the County, it will mail ballots to the owners of real property in the subdivision as provided by law.

A complete copy of the subdivision ordinance is enclosed.

TEXAS TRANSPORTATION CODE CHAPTER 253

Texas Transportation Code §253.001, the successor statute to Art. 6702-3 (repealed) states that "This chapter applies only to a subdivision, part of a subdivision, or an access road in an incorporated area of a county."

§253.003 indicates that "If the commissioners court of a county determines that the improvement of a road in a subdivision or of an access road to a subdivision is necessary for the public health, safety, or welfare of the residents of the county, the commissioners court *may* propose to" improve the road and assess all or part of the costs against the property owners therein.

A complete copy of Texas Transportation Code Chapter 253 is enclosed.

INTERLOCAL AGREEMENT BETWEEN CALDWELL COUNTY AND THE CITY OF MARTINDALE

On April 26, 1993, Caldwell County entered into an interlocal agreement with the City of Martindale for maintain certain designated roads within the city limits of the City of Martindale. There is no provision in the agreement for additional roads or streets being added, and the designated streets do not include the street or road in question in Skyview Subdivision.

A copy of the Interlocal Agreement between Caldwell County and the City of Martindale for

the maintenance of streets in the city is enclosed.

DISCUSSION OF ISSUES

The Caldwell County Subdivision Regulations set out specific procedures for residents of a rural subdivision to request that the County improve their road and assess the costs against them. The regulations also refers to the procedures set out in Art. 6702-#, TEX. REV. CIV. STAT. ANN. which has since been repealed and replaced by Texas Transportation Code Chapter 253. It would appear under §253.001 of the Transportation Code that the subdivision in question does not fall under the provisions of the county regulations or Chapter 253 since part of the subdivision is in the City of Martindale and the remainder is within its ETJ. However, Caldwell County has entered into an interlocal agreement to maintain the streets of the City of Martindale. Further, the insertion of the word "may" in §253.003 seems to give the Commissioners Court discretion to refuse such a request, even if it finds that the improvements are necessary for the public health, safety, or welfare of the county residents.

We request that you render an opinion on the following question:

Is Chapter 253 of the Transportation Code mandatory or permissive and does it apply to a road in a subdivision that is situated partially within the corporate city limits of a city and partially within the ETJ of that city where the county has an interlocal agreement with that city for maintenance of its streets?

Should you require any additional information, please let me know.

Sincerely,



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