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Criminal District Attorney
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RQ-0472-GA

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March 13, 2006

Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-44707-06
I.D. # 44707

RE: Request for Attorney General Opinion regarding Appointment of a Road Administration

To Whom It May Concern:

As Criminal District Attorney for Upshur County, I have been requested to seek an opinion from you regarding the above referenced matter. I have attached a brief which details all of the information

For additional questions or comments, please feel free to contact me at the above listed address and telephone number.

Very truly yours,

Mike Fetter
Upshur County Criminal D.A.

MF/tm

Enclosures

**BRIEF FOR REQUEST FOR AN OPINION ON APPOINTMENT OF A ROAD
ADMINISTRATOR IN LIEU OF A COUNTY ROAD ENGINEER**

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STATEMENT OF FACTS

In November of 2002, Upshur County voters elected to adopt a County Road Department system. In 2003 a licensed professional County Road Engineer was hired. This person resigned, and a licensed professional Road Engineer was hired to fill the vacancy. In 2004 a referendum vote was held to determine whether Upshur County would continue to use the County Road Department System. By a margin of one vote, the County elected to continue the County Road Department System. In early 2005, the position of County Road Engineer was posted for hiring. Six individuals applied for the job. Of these two were qualified engineers. And four applied as road administrators. By the time for interviews, one of the qualified engineers withdrew his name of the interview process. At the conclusion of the interview process, a road administrator was hired.

ISSUE NUMBER ONE

DID THE UPSHUR COUNTY COMMISSIONERS COURT VIOLATE THE TRANSPORTATION CODE WHEN IT APPOINTED A ROAD ADMINISTRATOR EVEN THOUGH A COUNTY ROAD ENGINEER APPLIED FOR THE POSITION

Analysis”

The appointment of a county road engineer is governed by TEX. TRANS. CODE ANN. § 252.302 (Vernon 2004). It provides among other things that a county shall appoint a county road engineer unless it is unable to employ a licensed professional engineer then it may employ a county road administrator. *Id.* In interpreting this provision, the Attorney General’s Office has issued three opinions. These opinions are as follows:

- (1) Opinion No. —1149
- (2) Opinion No. H-201
- (3) Opinion No. DM-368

A Copy of each of these opinions is included in the appendix. Of these three opinions, Opinion No. DM-368 is probably the best one for a couple of reasons. First, it is the most recent one to address this issue. Second in its analysis, it addresses the other prior opinions. In Opinion No. DM-368, the Attorney General held that a road administrator could be appointed if there were any good reason not to employ a county engineer. It also held that whether a good reason existed was dependent on the factual condition surrounding the hiring. In Opinion M-1149, the Attorney General held that any good reason was one that did not involve evidence of abuse of discretion.

Attached in the appendix is a letter from the Upshur County Judge detailing the reasons why the Court did not hire an engineer. Based on the reasons given, it appears that good cause existed

in declining to hire the engineer. And the Court did not abuse its discretion in appointing a road administrator.

CONCLUSION

After reviewing the appropriate statute, Attorney General opinions and the facts surrounding the appointment of a road administrator, it appears that the Commissioner's Court did not violate the provisions of the transportation code when it appointed a road administrator.

Respectfully Submitted,

Upshur County District Attorney
Mike Fetter
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By: 

Mike Fetter

State Bar No. 06946500

APPENDIX

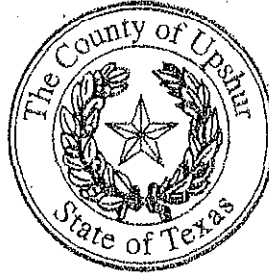
TEX. TRANS CODE ANN. § 252.302 (Vernon 2004)

Opinion No. M-1149

Opinion No. H-201

Opinion No. DM-368

County Judge's Letter



DEAN FOWLER

County Judge
P.O. Box 790
Gilmer, Texas 75644
903-843-4003 Fax: 903-843-0827

July 29, 2005

Mike Fetter
Criminal District Attorney
Upshur County Justice Center

Re: A. G. Opinion Regarding Hiring of Road Administrator

Dear Mike:

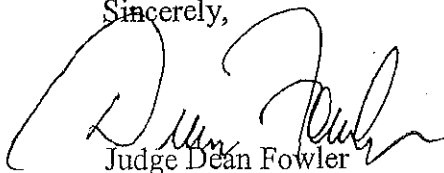
It is my understanding that Commissioner James Crittenden has requested an attorney general's opinion regarding the legality of the Commissioner's Court action in hiring a road administrator rather than a road engineer.

I have enclosed several pieces of information to help you in this matter. Please find enclosed, the three prior opinions from the attorney general that I have been able to find regarding this matter. Further, the Court's stated reasons for not hiring one of the two engineers that applied for the position were the lack of qualified candidates that applied (scarcity of applicants), the way in which one terminated his previous employment as road engineer for Harrison County and although he was invited, the failure of the other to appear before the Court during the interview process.

Last, the name of the assistant attorney general that Mr. Crittenden and I have both spoken to is Zandia Thomas. She can be reached at (512) 936 7949. In my conversation with her, I gave her the above reasons for the Court's action. She let me know that Mr. Crittenden had not provided her with all of the relevant information she needed in order to form an opinion. She then said she believed the Commissioner's Court had certainly followed the law in making the decision they did.

Please contact me if I can be of any other assistance in this matter.

Sincerely,



Judge Dean Fowler

CC: Upshur County Commissioners