

Warren Chisum
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JAN 12 2009

OPINION COMMITTEE

HAND DELIVER

January 12, 2009

FILE # ML-45966-09
I.D. # 45966

Hon. Greg Abbott
Attorney General of Texas
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0776-GA

RE: Opinion Request re HB No. 1610, 79th Regular Session (Local Gov. Code, §240.907)

Dear General Abbott:

During the 79th regular session I authored H.B. 1610 which allowed counties to charge \$500 for an activity that excavates or cuts the surface of a county road. A facility operator such as a pipeline company is of course required to repair the road after the installation but sometimes the patch or other repair to the pavement sinks or there is some other future problem associated with the repair. The \$500 fee was to allow the county to create a fund for future repairs which may be needed to the surface of the roads.

The issue of boring under the roads came up during the session. It was made clear to all interested parties that the \$500 fee did not apply when the facility was installed by boring under the road instead of cutting or excavating the surface of the road. Boring under a road does not damage the road itself. There is no reason to require the payment of a fee to repair the roads when the road itself is not impacted. In fact, the caption of the bill specifically stated that the bill was:

"relating to a county fee for an activity that excavates or cuts the surface of a county road."

We believe the language is clear that the bill covers excavating the surface or cutting the surface. Unfortunately, there is now an argument being made that the bill not only applies to activities which impact "the surface of the road" but that it also includes activities which only bore under the road.

District 88: Armstrong, Bailey, Briscoe, Castro, Childress, Collingsworth,
Donley, Gray, Hall, Hansford, Hemphill, Hutchinson, Lamb,
Lipscomb, Ochiltree, Parmer, Roberts, Swisher, Wheeler

Grammatically, it should also be apparent that "excavating" and "cutting the surface" are not independent clauses which stand on their own. A comma would need to be inserted between "excavating" and the conjunction "or" to make excavating and cutting independent clauses.¹

A contrary interpretation would re-write the bill so that a cut of a county road means "the act of excavating which does not cut the surface of the road or cutting the surface of a county road." The underlined language would be necessary to make the statute apply to boring under the road . That language is simply not in the legislation. The words "excavating" and "cutting" both apply to the surface of the road.

We would therefore request that you issue an opinion as to the correct interpretation of the statute which we believe applies only to excavating or cutting the surface of the road as stated in the caption and the bill itself and not to boring or tunneling under a road.

Sincerely,

A handwritten signature in cursive script that reads "Warren Chisum".

Warren Chisum, State Representative
Chair, House Committee on Appropriations

¹ LeClercq, *Punctuating with Commas*, Texas Bar Journal, June 1991 at p. 623.