

OFFICE OF THE COUNTY ATTORNEY **RECEIVED**

HUNT COUNTY, TEXAS

P.O. Box 1097

Greenville, Texas 75403-1097

Phone (903) 408-4112

Fax (903) 408-4297

JUL 16 2010

OPINION COMMITTEE

RQ-0900-GA

Joel D. Littlefield

County Attorney

Jeffrey E. Dailey

Jessica Edwards

Joel T. Hardman

Marcin L. Zakrocki

Wiley R. Hollopeter

James W. Lacy, III

Assistant County Attorneys



Brandi Painter

Office Manager

Janice Evans

Amenda Arnold

Andrea Lewis

Herman Orange

Legal Assistants

Brandon Bobbitt

Mike Pierce

Criminal Investigators

July 14, 2010

FILE # ML-46523-10
I.D. # 46523

**VIA FACSIMILE TRANSMISSION TO 512-463-2092
and CMRRR# 7008 1140 0004 9439 0156**

Honorable Greg Abbott
Attorney General for the State of Texas
300 West 15th Street, Suite 205
Austin, Texas 78711-2548

**RE: Request for Attorney General Opinion
Texas Transportation Code § 251.053**

Dear General Abbott:

I am seeking your opinion regarding the constitutionality of Texas Transportation Code § 251.053.

Pursuant to Texas Transportation Code § 251.053, Matthew H. McLaughlin has requested that the Hunt County Commissioner's Court declare a public road through privately owned property adjacent to Mr. McLaughlin's property. According to § 251.053, "A person who owns real property to which there is no public road or other means of public access may request that an access road be established connecting the person's real property to the county public road system by making a sworn application to the commissioners court requesting the court to establish the road." TEXAS TRANSP. CODE § 251.053(b).

Honorable Greg Abbott
July 14, 2010
Page 2

In compliance with § 251.053(b), Mr. McLaughlin has submitted a sworn statement to the Hunt County Commissioners stating that (1) he is the owner of real property to which there is no public road or other public means of access; (2) he is requesting that an access road be established connecting his property to the Hunt County public road system; (3) designating the lines of the proposed public road; (4) listing the names and places of residence of the persons that would be affected by the establishment of the road; and (5) describing why the road is necessary.

The Attorney General's Office has previously discussed § 251.053 in opinions dated November 10, 1998 and September 26, 2005. In Opinion DM-487 (1998), the Attorney General declined to answer questions regarding "access" under § 251.053 concluding that a court would likely find that the neighborhood road statute is unconstitutional because the statute does not require a public purpose for the taking of private property in contravention of article I, section 17 of the Texas Constitution. In Opinion GA-0359 (2005), the Attorney General made no mention of Opinion DM-487's declaration that the statute would likely be found void but rather discussed the statute as it pertained to maintenance of county roads as if the statute were valid.

We believe that if challenged, a court would find § 251.053 unconstitutional as it does not require a public purpose for the taking of private land. Our opinion is consistent with both DM-487 and Proposition 11 (2009) which recently amended article I, section 17 of the Texas Constitution by explicitly restricting the taking of private property for non-public uses.

In light of the inconsistency of these two opinions, Hunt County respectfully requests an opinion from the Attorney General regarding the constitutionality of § 251.053.

Sincerely,

Joel D. Littlefield
County Attorney

JDL/bp
Enclosures