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Honorable Ken Paxton
Texas Attorney General
Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0319-KP
FILE# ML-48663-19
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RE: **REQUEST FOR OPINION**

ISSUE:

Does a county have the authority to call a bond election pursuant to Article III Section 52 of the Texas Constitution and expend the bond funds for the construction, repair, improvement, and maintenance of city roads without buying the city roads or having the city disincorporate?

FACTS:

Sterling City and Sterling County currently have an interlocal agreement whereby Sterling County may in lieu of payment of water and sewer services from Sterling City provide Sterling City with road repair and maintenance services. All of the roads in Sterling City are in various stages of disrepair, decay, and ruin. Every road in some way needs repair, recondition, or reconstruction. The needed work is so extensive Sterling City does not have sufficient equipment, resources or funds for the reconstruction or repairs. The interlocal agreement also is unable to fulfill needed repairs. Sterling County does not have the equipment to tackle the work needed. It will be necessary to hire a private company who has all the necessary equipment to perform the work. The cost of the construction and repair for all the city streets will be an estimated \$8 million. Sterling City does not have the funds or tax base to call a bond election and/or pay for a reconstruction project of such magnitude. Sterling City Council and Mayor have asked Sterling County Commissioners and Judge to call a bond election for the county to fund Sterling City street construction and repair. Joint meetings have been held by Sterling City Council and Mayor with Sterling County Commissioners and County Judge. There has been discussion between the governing authorities before Sterling County may call a bond election for the construction or repair of Sterling City streets Sterling County must buy the city streets or Sterling City should disincorporate. While it appears the law no longer require city streets to be "integral" roads to expend county funds for city street construction or repair, in Sterling City most if not all city roads are "integral" roads as they connect to a main "thoroughfare", a U.S. or Texas highway. Before proceeding further to call a bond election the Sterling County Judge and Commissioners are requesting an Attorney General opinion on the legality of Sterling County calling a bond election for the repair of Sterling City streets without Sterling City having to disincorporate or sale the city streets to Sterling County.

ARGUMENTS AND AUTHORITIES

Sterling County and Sterling City have obtained legal opinions from private law firms specializing in representation of governmental authorities. These opinions cite Texas constitutional provisions, statutes

and caselaw supporting the position that counties have the authority to facilitate, fund, and help cities with road construction and maintenance if the city agrees and accepts the help through interlocal agreements. However, neither opinion give a decisive answer that a County has the authority to call a bond election to fund construction, repair, improvement, and maintenance of city streets.

Texas constitutional provisions, cases and statutes do suggest, if a county wants and the city agrees, a county has the authority to call a bond election to fund the construction, repair, improvement, and maintenance of city streets without buying the streets or the city having to disincorporate.

Texas Constitutional provision Section 52 of article 3 gives authority to counties...to issue bonds for the purpose of "The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof." See. Tex. Const. art. III sec. 52 (b)-(c).

Nowhere does the provision specify that the roads have to be "integral" roads to the county.

This constitutional provision does not limit the county's authority to only issue bonds for streets outside a city's limit. Nor, does the provision require the street or road to be connected to or "integral" to a major thoroughfare. The provision only specifies the bond be approved by 1) a vote of two-thirds of the voting qualified voters affected thereby, 2)not exceed one-fourth of the assessed valuation of the real property of the county, 3) levy and collect taxes to pay the interest thereon, and 4) create a sinking fund for redemption of the bond. See. Tex. Const. art. III sec. 52 (b)-(c).

A leading Texas Supreme Court case *City of Breckenridge v. Stephens County*, is cited by several Texas cases and Texas Attorney General opinions as authority for counties to use county bond funds to repair and maintain city streets which are connecting links or "integral" to county roads or state highways in the county so long as the exercise of such authority has the consent of the municipality. See *City of Breckenridge v. Stephens County*, 40 S.W. 2nd 43, (Tex. 1931); Tex. Atty. Gen. Op. LO—97-084 (1997); Tex. Atty. Gen. Op. GA-0576 (2007).

Reading Texas Transportation Code Section 251.012 and 251.015 with Tex. Government Code Sec. 791.032, a county may with the approval of the municipality, enter into a local agreement with such governmental entity to finance the construction, improvement, maintenance, or repair of streets or alleys not an "integral" part of or connecting link to other roads or highways; and/or, operate county equipment or assist on a project, or pay the costs of the repairs that the county would pay if the county would have made the repairs so long as the costs does not exceed \$15,000.00. See Texas Transportation Code Title 6, Subtitle C. Chap. 251. Subchapter A. Sec. 251.012 and Sec. 251.015 Amended (1999). See also, Texas Government Code Title 7, Chapter 791. Subchapter A. Sec. 791.032 effective date September 1, 1999. These statutes were enacted after Tex. Atty, Gen LO-97-084(1997) and Tex. Atty. Gen. Op. GA-0576 (2007) does not discuss these statutes which no longer require the street to be "integral" for a county to be able to construct or repair.. These statutes suggest legislation has shifted away from the narrow interpretation of *City of Breckenridge v. Stephens County* that city streets are to be an "integral" part or connecting link before a county can expend funds on them.

SUMMARY

If Texas cases, statutes, and Attorney General opinions declare counties may spend county funds or county bond funds with or without a contract to construct, repair, and maintain streets within a city that are "integral" even not "integral", a county should have the authority to issue a bond pursuant Texas Constitution Article III section 52 to construct, repair and maintain city streets with a city's consent even if the streets are not "integral" roads for the county and without a county having to buy the streets or the city disincorporating.

Respectfully submitted,



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