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By Opinion Committee February 11, 2020 THE SENATE OF TEXAS

SENATOR EDDIE LUCIO, JR.
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SENATOR DONNA CAMPBELL
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SENATOR ROBERT NICHOLS

SENATE COMMITTEE ON
INTERGOVERNMENTAL RELATIONS

February 10, 2020

RQ-0333-KP

FILE# **ML-48700-20**

I.D.# **48700**

The Honorable Ken Paxton
Attorney General, State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Dear Attorney General Paxton:

As Chairman of the Texas Senate Intergovernmental Relations Committee (IGR), I am respectfully requesting an Attorney General opinion on behalf of Senator Kirk Watson regarding an issue in his district. Enclosed is the pertinent information.

I thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio, Jr." with a flourish at the end.

Eddie Lucio, Jr.
Chairman

ELJ/fnm

Enclosures (5)

cc: Senator Kirk Watson





KIRK WATSON
STATE SENATOR • DISTRICT 14

NOMINATIONS - VICE CHAIR
EDUCATION
FINANCE
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February 5, 2020

Senator Eddie Lucio, Jr.
Chair – Senate Committee on Intergovernmental Relations
SHB #475
(512) 463-2527

Chairman Lucio,

I write to ask you, as the Chairman of the committee responsible for overseeing special districts, to request an Attorney General opinion concerning an issue facing the Bastrop County Water Control and Improvement District No. 2, located in Senate District 14. This District and the County have two open questions related to the road standards required under the authorizing statute as well as the timing and conditions of the transfer of those roads to the County. Specifically, an opinion on the answers to the following questions are requested:

1. Does Section 11001.008 of the Special District and Local Laws Code require new roads to be built under current standards applicable to new development in the remainder of the County, or some lesser standard?
2. Is the County required under Section 11001.010 of the Special District and Local Laws Code to accept roads constructed by the District that meet the applicable standards immediately, or may they impose a delay or other “warranty period?”

For additional background, I have attached a memorandum from the District concerning this issue. I appreciate your assistance in this matter and am happy to provide any additional information you may need.

Sincerely,

A handwritten signature in blue ink that reads "Kirk Watson".

Senator Kirk Watson

Mary Beth O'Hanlon
President
Sam Kier
Treasurer
Karen Pinard
Director

**BASTROP COUNTY WATER CONTROL AND
IMPROVEMENT DISTRICT #2**

Butch Carmack
Vice President
Scott Ferguson
Secretary
Paul Hightower
General Manager

January 17, 2020

Via Electronic Mail

The Honorable Kirk Watson
P.O. Box 12068
Capitol Station
Austin, TX 78711

Re: Request for Attorney General Opinion

Dear Senator Watson:

On behalf of the Board of Directors of Bastrop County Water Control and Improvement District No. 2 (the "District"), I am writing in order to request that you assist the District in securing an advisory opinion from the Attorney General pursuant to the authority granted the Attorney General in § 22 of Article IV of the Texas Constitution and § 402.041 *et seq.* of the Texas Government Code regarding certain questions relating to the District's road district authority under Chapter 11001 of the Texas Special District and Local Laws Code (the "Road Power Legislation").

BACKGROUND

The District is a water control and improvement district created and operating under the authority of Chapters 49 and 51 of the Texas Water Code, and Chapter 11001 of the Texas Special District and Local Laws Code. The District was originally created in 1985 to provide retail water and wastewater services to the residents of Tahitian Village in Bastrop County. In 1989, the Texas Legislature granted road district powers to the District by enactment of House Bill 2341. Since that time, the District's road district powers have been amended by the Texas Legislature on multiple occasions. The road district powers are exercised by the District to improve existing roads within the District, many of which never accepted by Bastrop County due to their substandard construction.

The District has no taxing authority. Its sole sources of revenues are water and wastewater fees and charges collected from its water and sewer customers, and monthly charges for roads levied pursuant to the Road Power Legislation. Due to funding limitations, the District is financially able to improve a limited number of roads each year with the proceeds of its road fees.

Historically, the District and Bastrop County have entered into an Interlocal Agreement each year to facilitate the construction of new roads within the community that can be accepted into the County's road system. Generally, the agreements provide for the District to retain a contractor to prepare the road base and purchase "chip seal" from Bastrop County, and after preparation of the roads by the contractor retained by the District, Bastrop County has applied the chip seal to the road base utilizing County equipment. The partnership has been a good one.

Recently, two questions have arisen with respect to the proper interpretation of Chapter 11001 of the Texas Special District and Local Laws Code. Both the District and Bastrop County seek an advisory opinion from the Attorney General regarding these questions for purposes of future road projects and future interlocal agreements between the parties.

QUESTIONS FOR ATTORNEY GENERAL ADVISORY OPINION

We respectfully request that assist the District in securing an advisory opinion regarding the following issues relating to the Road Power Legislation:

Section 11001.008: County Approval of Plans and Specifications

Section 11001.008 of the Road Power Legislation provides for the District to submit for the approval of the governing body of the City of Bastrop, or Bastrop County, as appropriate, all road plans and specifications prior to commencement of construction. Subsection (c) of the statute provides, in relevant part, the following standard for review and approval of plans and specifications for District road projects:

"In reviewing plans or specifications for construction in a subdivision, the City of Bastrop or Bastrop County shall generally apply, as a minimum standard, the standard the city or county applied to review similar plans or specifications at the time the subdivision was created. If the plans or specifications exceed that minimum standard, the standard for approval shall be based on good engineering practices related to subjects such as vehicle and pedestrian safety, soil and terrain variables, watershed impacts, projected traffic use, and future maintenance requirements."

Bastrop County has advised the District that it had no standards applicable to the review of plans or specifications for roads at the time Tahitian Village subdivisions were platted in 1974. As a result, the County has recently advised the District that it must design roads to meet the *current standards applicable to new subdivisions* within Bastrop County. The cost of improving roads in Tahitian Village to the same standards applicable to the construction of new subdivisions by developers of property in Bastrop County would be substantial and would dramatically impair and

delay the number of roads that could be improved by the District utilizing its road fees.

The District seeks an advisory opinion as to whether Section 11008.001 of the Road Power Legislation authorizes Bastrop County to require the District's road projects to be designed according to the same standards applicable to new developer subdivisions in the County, or whether the statute authorizes a lesser standard designed by a professional engineer after consideration of all relevant factors such as vehicle and pedestrian safety, soil and terrain variables, watershed impacts, projected traffic use, and future maintenance requirements.

Section 11008.010: Conveyance of Completed Roads

Section 11001.010 of the Road Power Legislation provides, in relevant part, as follows with respect the conveyance of completed roads by the District to Bastrop County:

“(a) The district shall convey the completed improvements to the City of Bastrop or Bastrop County as appropriate.

(b) If the improvements comply with the minimum standards the city or county, as applicable, prescribes for improvements in its jurisdiction, the city or county shall accept the improvements.”

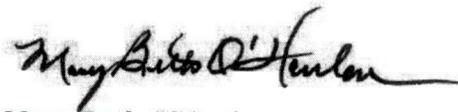
Bastrop County has determined that it will not accept completed roads by the District until after the expiration of a **one year “warranty period”, being the same warranty period applicable to the construction of new road improvements by developers of residential subdivisions.** During the warranty period, the District is obligated to perform any repairs determined necessary by the County.

The District seeks an advisory opinion as to whether Section 11010 of the Road Power Legislation authorizes Bastrop County to impose a warranty period prior to acceptance of completed road improvements, or whether the County is obligated to accepted the improvements immediately upon completion of construction if the road improvements are completed in accordance with the plans and specifications approved by the County.

CONCLUSION

We appreciate your consideration of this matter and respectfully request that you assist the District in securing an Attorney General's advisory opinion regarding the questions presented herein. If you have any questions regarding this matter or the questions raised, please do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Beth O'Hanlon". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mary Beth O'Hanlon
President, Board of Directors
Bastrop County Water Control and
Improvement District No. 2