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Opinion Committee

RQ-0112-JC

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The Attorney General of Texas
Supreme Court Building
ATTN: Opinions Committee
Post Office Box 12548
Austin, Texas 78711-2548
(CMRRQ No.: P 440 930 842)

FILE # ML-40992 -99
I.D.# 40992

Re: Request for attorney general's opinion pursuant to V.T.C.A., Government Code, section 402.043

Dear Sir/Ma'am:

In accordance with referenced statute, I am requesting an attorney general's opinion. I will first set out the questions, then the facts, the law that I think is applicable, and my conclusion.

QUESTIONS No. 1:

Is the Frio County Commissioners Court authorized to lay center stripes on paved county roads which allows 2-way traffic as well as install speed bumps, whether same are laid within or outside a municipality?

QUESTION No. 2:

If the Court has authority to stripe its roads, may it then be authorized to enforce violations of same, e.g. failure to drive in a single lane?

QUESTION No. 3:

If the county has authority to install speed bumps on county roads, would this be in contravention of section 251.008 of the Code, "General Requirements for County Roads," which *inter alia* states:

"A public road of any class must:

- (1) be clear of all obstructions;

*****"

FACTS:

A Frio County Commissioner expressed to me the concern of a constituent as to the lack of center striping on county roads.

Furthermore, in the past it has been suggested by citizens in this county why speed bumps couldn't be installed on county roads by the commissioners court.

LAW:

It is axiomatic, as stated in TEXAS PRACTICE, Volume 35, "County and Special District Law," section 5.11 by D. BROOKS:

"Perhaps the most fundamental proposition in county government law in Texas is that the commissioners court can act only as it may be authorized by the state Constitution or statutes (although it is at times called a court of general jurisdiction within its sphere of authority).

Mr. Brooks further states in his treatise:

"Article V, section 18 of the Constitution grants the commissioners court jurisdiction over all 'county business,' as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed." (citation omitted). Thus, the commissioners court can act only where authorized; however, once granted authority to act the courts will allow the exercise of broad discretion on the part of the commissioners court to exercise all authority, express or implied, necessary to achieve the specific goal authorized by state law. There is a persistent problem in Texas law concerning counties and the need for specific authority to act in any particular form or fashion."

Furthermore, V.T.C.A., Transportation Code, (hereinafter, "Code") section 251.151, "Authority of Commissioners Court" provides:

"The commissioners court of a county may regulate traffic on a county road or on real property owned by the county that is under the jurisdiction of the commissioners court."

Section 251.161 of the Code, "Violations of Subchapter; Offense" provide for a fine for first and second offenses and a fine and/or confinement in jail for third and subsequent offenses for violations of the subchapter which includes section 251.151, *supra*.

Whether a road is laned for 2-way or multi-lane traffic, operators may not drive to the left side of the roadway with exceptions (see Code, section 545.046 of the Code.)

Before any traffic regulation may be issued by a commissioners court, section 251.152, "Public Hearing Required," of the Code requires publication of notice of a public hearing and hearing on the proposed regulation.

Section 251.154 of the Code, "Maximum Reasonable and Prudent Speeds on County Roads," authorizes commissioners courts by order entered on its minutes to determine minimum and maximum reasonable and prudent speed limits for travel on county roads as well as requirements for setting same.

Section 251.155 of the Code, "Restricted Traffic Zones," authorizes commissioners courts to adopt:

* * * regulations establishing a system of traffic control devices in restricted traffic zones on property described by section 251.151. * * * * *

Of course, any traffic control devices so adopted must conform to the manual and specifications of the Texas Department of Transportation.

Furthermore a "device" as defined in Webster's New Century Dictionary is:

"a mechanical contrivance for a particular purpose."

As to whether a speed bump constitutes an "obstruction" which a commissioner court is under a duty pursuant to section 251.008 of the Code, *supra*, to keep clear from county roads, the only case that I could find which speaks to "obstructions" as such is County of Hays, et al. v. Alexander, et ux., 640 S.W. 2d 73, CA-Austin (1982), no writ hist.

This case discusses "obstructions" along with trees in the county road. In the same vein section 251.008 of the Code, *supra*, lists "obstructions" and other "obstructions,"(?) such as (tree) stumps of a certain height mandated being reduced to a certain height.

The Code Construction Act (V.T.C.A. Government Code, Chapter 311) in section 311.011, "Common and Technical Usage of Words" states that:

- "(a) Words and phrases shall be read in context according to the rules of grammar and common usage.
- "(b) Words and phrases that have a technical or particular meaning whether by legislative definition or otherwise, shall be construed accordingly."

MY CONCLUSION:

As stated, *supra*, the commissioners court's authority is restricted as to what is authorized by the state Constitution and the laws of the state or as may be hereafter prescribed.

However, section 251.151 of the Code does authorize a commissioners court to "regulate" traffic on its roads which are under the jurisdiction of the court.

The word "regulate" is defined as:

"To fix, establish, or control; to adjust by rule, method or established mode; to direct by rule or restriction; to subject to governing principles or laws." (BLACK'S LAW DICTIONARY Rev. Fourth Ed.)

As Mr. Brooks in his treatise points out, *supra*, there is this persistent problem in Texas with regard to counties and the requirement for express authority in the law to act in any "particular form or fashion."

The courts in the past have recognized this problem and have allowed commissioners courts to exercise broad discretion in exercising their authority, either express or implied, necessary to achieve a specific goal which is statutorily authorized.

As for a commissioners court's authority to install speed bumps and with the principles of the Code Construction Act in mind, and since the word "obstructions" is not defined in section 251.008 of the Code, then, in my opinion, the common usage of this word must be examined and the word read in context in the statute.

"Obstructions" as defined, *inter alia*, in Webster's New Century Dictionary is:

"1. The act of obstructing or the condition of being obstructed;

"2. An obstacle; an impediment; anything that obstructs;

Thus, a speed bump would be an "obstruction" as defined, but, in my opinion and utilizing section 311.011 of the Code Construction Act, *supra*, and by reading in context the word "obstructions" in section 251.008 of the Code, it would be in the nature of a "natural" impediment as opposed to a "man-made" impediment, such as a speed bump. As a consequence, a commissioners court would not be in contravention of the statute if it installed speed bumps.

Furthermore, in my opinion, and, although the statutes do not specifically authorize the striping of the aforementioned county roads or the laying of speed bumps in lieu of speed zones, in order to "regulate" traffic on county roads, the commissioners would have authority (express or implied) to stripe a center line on its county roads and to lay a speed bump in lieu of speed zones as part of its regulatory power over traffic on county roads.

Sincerely,



JAMES W. SMITH, JR.

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