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OPINION COMMITTEE



FILE # MI-46412-10  
I.D. # 46412

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March 31, 2010

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

Re: Opinion Request – Authority of Commissioners Court to Regulate Traffic

Dear General Abbott:

The Denton County Criminal District Attorney's Office hereby requests your opinion to determine whether the Denton County Commissioners Court has statutory authority to adopt traffic regulations to regulate traffic on non-county maintained public roads in subdivisions located within a Fresh Water Supply District in an unincorporated area of Denton County, Texas. If not, does a Fresh Water Supply District have statutory authority to adopt traffic regulations to regulate traffic on non-county maintained public roads located in a subdivision within a Fresh Water Supply District? In this instance, the phrase "regulate traffic" means formal action by the Denton County Commissioners Court to lower posted speed limits, provide restricted traffic areas for school zones, install stop signs and other approved traffic control devices, and impose parking restrictions on certain roads located within a Fresh Water Supply District.

Once a subdivision plat has satisfied the statutory requirements, the commissioners court has a ministerial duty to approve the plat and thus authorize its filing. Op. Tex. Att'y Gen. No. GA-0594 (2008) (citing *Comm'rs Ct. v. Frank Jester Dev. Co.*, 199 S.W.2d 1004, 1007 (Tex. Civ. App.--Dallas 1947, writ ref'd n.r.e.)). Dedication is a mere offer and a commissioners court's approval of a subdivision plat for filing that contains a dedication does not constitute a county's acceptance of a dedication of roads depicted on the plat. *Id.* (citing *Langford v. Kraft*, 498 S.W.2d 42, 49 (Tex. Civ. App.--Beaumont 1973, writ ref'd n.r.e.; writ disp'd w.o.j.)). The recording of a map or plat which shows streets or roadways thereon, without more, does not constitute a

dedication, as a matter of law, of such streets as public roadways. *Id.* (citing *Ford v. Moren*, 592 S.W.2d 385, 390 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.) (quoting *Aransas County v. Reif*, 532 S.W.2d 131, 134 (Tex. Civ. App.--Corpus Christi 1975, writ ref'd n.r.e.)); see *Frank Jester Dev. Co.*, 199 S.W.2d at 1007. Moreover, even if the roads in question were dedicated to the public, they would not be county roads unless the commissioners court accepted the roads into the county road system. *Id.* (citing *Miller v. Elliott*, 94 S.W.3d 38, 45 (Tex. App.--Tyler 2002, pet. denied); *Frank Jester Dev. Co.*, 199 S.W.2d at 1006-07); see Op. Tex. Att'y Gen. No. GA-0139 (2004).

In analyzing the authority of a county to enforce speed limits on roads in a subdivision dedicated to the public, but not accepted into the county road system, the Texas Attorney General has previously ruled that "[t]he mere filing of a subdivision plat dedicating subdivision roads to the public [did] not authorize Fort Bend County to regulate and enforce speed limits on such roads. In order to have such authority, the county must have accepted the road for maintenance as part of the county road system." Tex. Att'y Gen. LO95-064 (1995). A subsequent interpretation of LO95-064 asked "whether county law enforcement officers were authorized to issue traffic citations to drivers speeding on streets that were not part of the county road system. The streets at issue in [LO95-064] were dedicated to the public in [a] subdivision plat filed by the developer, but the dedication was not accepted by the commissioners court. Accordingly, the streets never became public. Op. Tex. Att'y Gen. No. JC-0016 (1999) (citing *Frank Jester Dev. Co.*, 199 S.W.2d at 1007). LO95-064 concluded that the county had no authority to regulate and enforce speed limits on such roads because they were not public roads. Op. Tex. Att'y Gen. No. JC-0016 (1999).

The roads at issue in this instance are located entirely within a lawfully created Fresh Water Supply District, created under Chapter 53 of the Texas Water Code, with the powers of General and Special Law Districts, created under Chapter 49 of the Texas Water Code. A Fresh Water Supply District, General Law District and/or Special Law District are hereinafter collectively referred to as "a District" or "the District." The roads within the District were established in a subdivision plat which dedicated the roads within the subdivision to the public or to public use and the recorded plat was formally approved by the Denton County Commissioners Court and duly recorded in the Denton County Clerk's Office; however, the Denton County Commissioners Court never formally accepted the roads depicted on the plat for maintenance and Denton County has never maintained these roads. The public roads within the subdivisions located in the District have always been maintained by the District. Texas Water Code Chapter 49 defines the term "district" as any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created and applies to all general and special law districts to the extent that the provisions of this chapter do not directly conflict with a provision in any other chapter of this code or any Act creating or affecting a special law district. Op. Tex. Att'y Gen. No. JC-0530 (2002) (citing TEX. WATER CODE ANN. §§ 49.001(a)(1) and 49.02(a) (Vernon 2008 & Supp. 2009)).

A Fresh Water Supply District can only exercise those powers that are expressly granted to it under statutory law and the District is limited in its regulatory authority to

enforcing rules and regulations by ordinary civil remedies. *Mobil Oil Corp. v. Matagorda County Drainage Dist. No. 3*, 597 S.W.2d 910, 913 (Tex. 1980). In addition, a Fresh Water Supply District has no authority to enforce criminal laws or delegate such authority to a city, although a District can contract for law enforcement and emergency services. *See Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940). A Fresh Water Supply District may exercise only such powers as have been expressly delegated to it by the Legislature, or which exist by clear and unquestioned implication. *Id.* at 946.

“Governmental agencies, or bodies corporate such as Fresh Water Supply Districts, are commonly referred to by courts as quasi municipal corporations, for the reason that they are constituted by the legislature to exercise, in a prescribed area, a very limited number of corporate functions, and they are said to be ‘low down in the scale or grade of corporate existence.’ The powers of such districts are measured by the terms of the statutes which authorized their creation and they can exercise no authority that has not been clearly granted by the legislature.” *Id.* at 948.

The Denton County Commissioners Court adopted an ex officio road commissioner system for Denton County in 2003. *See* Op. Tex. Att’y Gen. No. GA-295 (2005). The commissioners court of a county may exercise general control over all roads, highways and bridges in the county. TEX. TRANSP. CODE ANN. § 251.016 (Vernon 1999 & Supp. 2009); *see* Op. Tex. Att’y Gen. GA-0509 (2007) (citing *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 31-32 (Tex. 2003)). 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. TEX. TRANSP. CODE ANN. § 251.151 (Vernon 1999 & Supp. 2009). The commissioners court may issue a traffic regulation for a county road after proper notice and a public hearing. TEX. TRANSP. CODE ANN. § 251.152(a)-(b) (Vernon 1999 & Supp. 2009); *see* Op. Tex. Att’y Gen. No. GA-0129 (2003). In addition, the commissioners court has the authority to establish load limits for any county road and bridge; to determine and set a maximum reasonable and prudent speed for a vehicle travelling on any segment of a county road, including a road or highway intersection, railroad crossing, curve or hill; to adopt regulations establishing a system of traffic control devices in restricted traffic zones; impose parking restrictions on county roads; and prohibit the use of a county roads. TEX. TRANSP. CODE ANN. §§ 251.153 - 251.157 (Vernon 1999 & Supp. 2009); *see* Op. Tex. Att’y Gen. GA-0088 (2003). Do the statutes in this paragraph give the Denton County Commissioners Court statutory authority to adopt traffic regulations to regulate traffic on non-county maintained public roads in a subdivision located within a Fresh Water Supply District in an unincorporated area of Denton County, Texas?

Texas Transportation Code § 542.007 entitled “Traffic Regulations: Private Subdivisions in Certain Counties,” provides as follows:

(a) This section applies only to a subdivision that is located in the unincorporated area of a county with a population of 500,000 or less.

(b) On petition of 25 percent of the property owners residing in a subdivision in which the roads are privately maintained or on the request of the governing body of the entity that maintains those roads, the commissioners court of the county by order may extend any traffic rules that apply to a county road to the roads of the subdivision if the commissioners court finds the order in the interest of the county generally. The petition must specify the traffic rules that are sought to be extended. The court order may extend any or all of the requested traffic rules.

(c) As a condition of extending a traffic rule under Subsection (b), the commissioners court may require that owners of the property in the subdivision pay all or part of the cost of extending and enforcing the traffic rules in the subdivision. The commissioners court shall consult with the sheriff to determine the cost of enforcing traffic rules in the subdivision.

(d) On issuance of an order under this section, the private roads in the subdivision are considered to be county roads for purposes of the application and enforcement of the specified traffic rules. The commissioners court may place official traffic control devices on property abutting the private roads if:

- (1) those devices relate to the specified traffic rule; and
- (2) the consent of the owner of that property is obtained.

TEX. TRANSP. CODE ANN. § 542.007(a)-(d) (Vernon 1999 & Supp. 2009).

Although recent population estimates show Denton County with a current population in excess of 500,000 people, Denton County had a population of 500,000 or less according to the population numbers shown by the most recent federal decennial census and that is the standard to be applied according to the Code Construction Act. TEX. GOV'T CODE ANN. § 311.005(3) (Vernon 2005 & Supp. 2009); TEX. GOV'T CODE ANN. § 312.011(20) (Vernon 2005 & Supp. 2009). What is the definition of a "private subdivision" and is a subdivision located within a Fresh Water Supply District a private subdivision for the purposes of the applicability of Texas Transportation Code § 542.007(a)-(d) and if so, can the Denton County Commissioners Court elect to adopt traffic regulations within a Fresh Water Supply District if the requisites of Texas Transportation Code § 542.007 are met, at least until such time as the next federal decennial census reveals that Denton County has a population in excess of 500,000 people? If the Denton County Commissioners Court can adopt traffic regulations within the Districts under Texas Transportation Code § 542.007 and the most recent federal decennial census, will regulations adopted by the Commissioners Court before the next federal decennial census still be valid after the next federal decennial census, assuming the census shows that Denton County has a population in excess of 500,000 people?

A "local authority" is a county, municipality or other local entity authorized to enact traffic laws under the laws of this state. TEX. TRANSP. CODE ANN. § 541.002(3)(A)

(Vernon 1995); see Op. Tex. Att’y Gen. No. GA-0129 (2003); see also Op. Tex. Att’y Gen. No. GA-0150 (2004). A local authority, with respect to a highway under its jurisdiction and in the reasonable exercise of the police power may: regulate traffic by traffic control devices; regulate stopping or parking of a vehicle; designating an intersection as a stop intersection or a yield intersection; designating school crossing zones; or altering a speed limit. TEX. TRANSP. CODE ANN. § 542.202 (a)(1), (2), (8), (11), (12) (Vernon 1999 & Supp. 2009); see Op. Tex. Att’y Gen. No. JC-0175 (2000).

Since there is no statutory definition of a “traffic regulation,” the Attorney General concluded that under its “common meaning” a traffic regulation is “a prescribed rule of conduct for traffic intended to promote the orderly and safe flow of traffic” and a commissioners court order authorizing the installation of stop signs at a location within its jurisdiction is an example of a traffic regulation. Op. Tex. Att’y Gen. No. GA-0129 (2003) (citing TEX. TRANSP. CODE ANN. § 251.155 (Vernon 1999 & Supp. 2009)). The commissioners court of 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. TEX. TRANSP. CODE ANN. § 252.151 (Vernon 1999 & Supp. 2009). The commissioners court of a county may adopt regulations establishing a system of traffic control devices in restricted traffic zones on a county road or on property described in Texas Transportation Code § 251.151 and the commissioners court by an order entered in its minutes may install and maintain on a county road or on property owned by the county that is under the jurisdiction of the commissioners court, any traffic signal light, stop sign, or no parking sign that the court considers necessary for public safety. TEX. TRANSP. CODE ANN. § 251.155(a)-(c) (Vernon 1999 & Supp. 2009).

To implement a local traffic ordinance, a local authority may place and maintain a traffic control device on a highway under the authority’s jurisdiction. TEX. TRANSP. CODE ANN. § 544.002(b) (Vernon 1999 & Supp. 2009); see Op. Tex. Att’y Gen. No. GA-0129 (2003) (citing *Lorig v. City of Mission*, 629 S.W.2d 699, 700 (Tex. 1982)). An “official traffic-control device” is: a sign, signal, marking, or device that is placed or erected by a public body or officer having jurisdiction and used to regulate, warn or guide traffic. TEX. TRANSP. CODE ANN. §§ 541.304(1)(B)-(C) (Vernon 1999 & Supp. 2009); see Op. Tex. Att’y Gen. No. JC-0175 (2000). A “highway or street” is the width between the boundary lines of a publicly maintained way, any part of which is open to the public for vehicular traffic. TEX. TRANSP. CODE ANN. § 541.302(5) (Vernon 1999 & Supp. 2009); see Op. Tex. Att’y Gen. No. JC-0016 (1999). Is a Fresh Water Supply District included within the definition of a “local authority” or “other local entity,” such that the District has the lawful authority to adopt traffic regulations on a non-county maintained public road located in a subdivision within a Fresh Water Supply District?

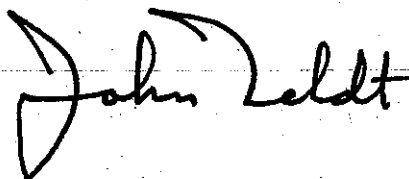
### CONCLUSION

Does the Denton County Commissioners Court have statutory authority to adopt traffic regulations to regulate traffic on non-county maintained public roads in subdivisions located within a Fresh Water Supply District in an unincorporated area of Denton County, Texas, except for as otherwise provided for in Texas Transportation

Code § 542.007? Would the validity of a traffic regulation adopted by the Denton County Commissioners Court under Texas Transportation Code § 542.007, become invalid when the population of Denton County exceeds 500,000 according to the last federal decennial census? Does a Fresh Water Supply District in an unincorporated area of Denton County, Texas, have statutory authority to adopt traffic regulations to regulate traffic on a non-county maintained public road located in a subdivision within a Fresh Water Supply District?

Please contact our office if you need additional information to prepare your opinion.

Sincerely,

A handwritten signature in black ink that reads "John Feldt". The signature is written in a cursive style with a large, sweeping initial "J".

John Feldt  
Assistant District Attorney