



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

July 17, 1952

Hon. Sam W. Davis
District Attorney
Harris County
Houston, Texas

Opinion No. V-1480

Re: Authority of the commissioners' court to prevent the sale of lots fronting on a street less than sixty feet wide in a subdivision which has not been platted and recorded.

Dear Sir:

You have requested an opinion on the following question.

"The Harris County Commissioners' Court has requested this office to obtain your opinion on the following problem:

"A land developer is selling lots outside of the corporate limits of cities or towns by metes and bounds descriptions in a general scheme or subdivision which has not been platted and recorded as prescribed by law; the roads or streets on which the lots front are less than 60 feet in width.

"Does the county commissioners' court have authority to prevent the sale of lots by metes and bounds description, fronting on a street less than 60 feet wide, contrary to S.B. 321, 52nd Legislature? If so, what procedure is available to the commissioners' court to prevent such sales, if any?"

Senate Bill 321, Acts 52nd Leg., R. S. 1951, ch. 151, p. 256 (Art. 2372k, V.C.S.) provides:

"Section 1. (a) In all counties having a population of not less than one hundred ninety thousand (190,000) according to the last preceding or any future Federal Census, the Commissioners Courts of such counties shall have the authority to require the

owner or owners of any tract of land situated outside of the boundaries of any incorporated town or city in such counties, who may hereafter divide the same in two or more parts for the purpose of laying out any subdivision of any such tract of land, or for laying out suburban lots or building lots, and streets, alleys or parks or other portions intended for public use, or the use of purchasers or owners of lots of any such tract of land, to provide for a right-of-way of not less than sixty (60) feet for any road or street within such subdivision.

"(b) The Commissioners Courts of any such counties shall have the authority to promulgate reasonable specifications to be followed in the construction of any such roads or streets within such subdivisions, which specifications may include provisions for the construction of adequate drainage for such roads or streets.

"Sec. 2. The Commissioners Courts of any such counties shall have the authority to require the owner or owners of any such tract of land which may be so subdivided to give a good and sufficient bond for the proper construction and maintenance of such roads or streets, executed by some surety company authorized to do business in this State. Such bond shall be made payable to the County Judge, or his successors in office, of the county wherein such subdivision lies, and conditioned that the owner or owners of any such tract of land to be subdivided will construct any roads or streets within such subdivision in accordance with the specifications promulgated by the Commissioners Court of any map or plat of any such subdivision. The bond shall be in such amount as may be determined by the Commissioners Court but shall not exceed a sum equal to Three (\$3.00) Dollars for each lineal foot of road or street within such subdivision.

"Sec. 3. The Commissioners Courts of any such counties shall have the authority to refuse to approve and authorize any map or plat of any such subdivision unless such map or plat provides for not less than the minimum right-of-way for roads or streets as required in Section 1(a) hereof; and there is submitted with such map or plat a bond as required by Section 2 hereof."

In Gulf View Courts v. Galveston County, 150 S.W.2d 872 (Tex. Civ. App. 1941, error ref.), the court granted Galveston County a mandatory injunction requiring the Gulf View Courts to remove certain buildings from an easement for sea-wall purposes which the county had previously obtained.

It is well settled that a county will be entitled to injunctive relief for the purpose of keeping easements for road purposes unobstructed. Huston v. Throckmorton County, 215 S.W.2d 387 (Tex. Civ. App. 1948); West v. Ellis County, 241 S.W.2d 344 (Tex. Civ. App. 1951).

Senate Bill 321 grants to the County an easement of sixty feet for roads or streets intended for public use. It specifically provides that the commissioners' courts are authorized to require the owner of a subdivision to "provide for a right-of-way of not less than sixty feet." Further, the commissioners' court may promulgate reasonable specifications for the construction of such roads. The emergency clause states:

" . . . that maintaining shoddy roads and streets in new subdivisions has become a heavy drain on County Road and Bridge Funds, and the fact that at present the County Commissioners Courts have no legal authority to require real estate developers to construct substantial roads and streets in such new subdivision, creates an emergency. . . ."

Thus it is proper for the commissioners' court to protect this property interest by resort to the courts for an injunction against interference with its use.

The grant of an express power by the Legislature gives with it by necessary implication every other power necessary and proper to the execution of the power

expressly granted. Terrell v. Sparks, 104 Tex. 191, 135 S. W. 519 (1911); Moon v. Allred, 277 S.W. 787 (Tex. Civ. App. 1925, error dism.). Therefore, it is our opinion that the commissioners' court may bring an injunction proceeding to enforce the provisions of Senate Bill 321.

SUMMARY

The commissioners' courts of counties having a population of 190,000 or more inhabitants may bring an injunction proceeding to enforce the provisions of Senate Bill 321, Acts 52nd Leg., R.S. 1951, ch. 151, p. 256 (Art. 2372k. V.C.S.), providing that the commissioners' courts are authorized to require that owners of subdivisions situated outside the bounds of any incorporated town or city provide for rights-of-way of not less than sixty feet for any roads or streets within their subdivision.

Yours very truly,

APPROVED:

J. C. Davis, Jr.
County Affairs Division

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JR:am