



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**August 24, 1953**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

**Mr. Austin Anderson  
Criminal District Attorney  
Bexar County  
San Antonio, Texas**

**Opinion No. S-88**

**Re: Necessity to condemn right  
of access to a future free-  
way, as distinguished from  
right of access to the exist-  
ing highways which the free-  
way will replace.**

**Dear Mr. Anderson:**

**In your recent opinion request concerning freeways, Article 1085a, Vernon's Civil Statutes, you make the following statements and ask the following questions.**

**"Section 1 of the Article is the part with which we are concerned. That section reads as follows:**

**'The State Highway Commission or the governing body of any incorporated city or town, within their respective jurisdictions may do any and all things necessary to lay out, acquire, construct, maintain and operate any section or any portion of any State Highway or City street as a freeway, and to make any highway or street within their respective jurisdictions a freeway, except that no existing State Highway or City street shall be converted into a freeway except with the consent of the owners of abutting lands, or by the purchase or condemnation of their right of access thereto, providing, however, nothing herein shall be construed as requiring the consent of the owners of abutting lands where a State Highway, or City street is constructed, established, or located for the first time as a new way for the use of vehicular and pedestrian traffic.'**"

**"We think that Bexar County is bound by this statute for the reason that under Article 6674n, the State Highway Commission acts through the Commissioners Court.**

**"The question we would like answered is this:**

**'Is it legally sufficient to condemn the right of access in and to the existing highway, or**

is it necessary to condemn the right of access in and to the "freeway?"

"You will notice that Section 1 reads in part that:

'No existing State Highway or City street shall be converted into a freeway except with the consent of the owners of abutting lands or by the purchase or condemnation of their right of access thereto, . . .'

"The antecedent to 'thereto' seems to be the key to the proper interpretation. The question resolves itself into this: To what does 'thereto' have reference, existing highway or freeway?"

In 1951, the Texas Legislature passed the present Freeway Act, and defined "freeway" in Section 3 thereof. This definition is as follows:

"Section 3. 'Freeway' means a state highway or city street in respect to which the right or easement of access to or from their abutting lands has been acquired in whole or in part from the owners thereof by the State Highway Commission or the governing body of an incorporated city or town as herein above provided." Article 1085a, V. C. S.

Such a definition of freeway clearly presupposes the existence of access and egress rights to exist in abutting property owners to the freeway.

Section 1 of Article 1085a merely authorizes the State Highway Commission or the governing body of any incorporated city or town to construct a freeway. Hence, that portion of Section 1 which reads "except that no existing state highway or city street shall be converted into a freeway except with the consent of the owners of abutting lands, or by the purchase or condemnation of the right of access thereto," clearly authorizes the Highway Commission to do no more than build a freeway, as defined by Section 3.

It is our opinion that in Section 1 of Article 1085a, V. C. S., "thereto" refers to freeway. Therefore, it will be necessary for you to condemn the right of access in and to the freeway.

SUMMARY

Under Section 1 of Article 1085a, V. C. S., it is necessary to condemn right of access to a future freeway, as distinguished from right of access to the existing highway which the freeway will replace.

APPROVED:

Rudy G. Rice  
State Affairs Division

C. K. Richards  
Reviewer

Robert S. Trotti  
First Assistant

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By *Milton Richardson*  
Milton Richardson  
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