



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WALTON GARR
ATTORNEY GENERAL**

September 8, 1966

Mr. Tom Blackwell
District Attorney
Travis County
Austin, Texas

Opinion No. C-752

Re: Whether the Commissioner's
Court can discontinue a
public road if the road ex-
tends through land owned by
the Lower Colorado River
Authority

Dear Mr. Blackwell:

We refer to your letter requesting our opinion on the captioned matter, from which we quote in part:

"FACTS: An application has been made to the Commissioner's Court of Travis County requesting it to discontinue and vacate a pre-existing public road across private property and across LCRA land to a ford on the Colorado River.

"QUESTION: Can the Commissioner's Court discontinue and vacate a public road which has ceased to be used for many years, if the road extends through land covered by the Lower Colorado River Authority?"

You ask whether the Commissioner's Court can "discontinue and vacate" a public road. Article 2351 of Vernon's Civil Statutes in specifying certain powers provides, in part, that each Commissioner's Court shall,

"3. Lay out and establish, change and discontinue public roads and highways."

Under this authority the Commissioner's Court can "discontinue" a public road, and this opinion is written upon the premise that you use the terms "discontinue" and "vacate" synonymously, and that they mean a discontinuance of the county maintenance and not a physical closing of same.

Article 6703 of Vernon's Civil Statutes provides, in part, as follows:

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"The Commissioners Court shall order the laying out and opening of public roads when necessary, and discontinue or alter any road whenever it shall be deemed expedient."

Article 6705, Vernon's Civil Statutes, provides for notice and other prerequisites to such road discontinuance which must be adhered to by the Commissioner's Court in the exercise of the powers granted under the Article 6703.

Your request further makes reference to a possible conflict with Article 8280-107, Sec. 15, Vernon's Civil Statutes, which, in limiting the powers of the Lower Colorado River Authority, provides, in part, as follows:

"All public rights-of-way now traversing the areas to be flooded by the impounded waters shall remain open as a way of free public passage to and from the lakes created and no charge shall ever be made to the public for the right to engage in hunting, fishing, boating or swimming thereon."

It is the opinion of this office that the quoted portion of Article 8280-107 is addressed to the Lower Colorado River Authority; but it is in no way intended to limit the power of the Commissioner's Court under Articles 6703 or 6705.

You made further reference to the applicability of Article 6703a, Vernon's Civil Statutes. This Article pertains to the termination of certain rights of the public in roads under given fact situations. It operates independently of any action of the Commissioner's Court and this office is of the opinion that said Article does not limit the powers of the Commissioner's Court under Article 6703, and Article 6705, and would in no way alter the opinion herein expressed.

It is therefore the opinion of this office that the Commissioner's Court of Travis County under the powers granted in Article 6703 may discontinue the road upon compliance with the terms and provisions thereof, unaffected by the provisions of Article 8280-107, Sec. 15, or Article 6703a.

SUMMARY


A Commissioner's Court may discontinue a public road under the authority of Article 6703 and Article

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6705, V.C.S.; this power does not conflict with,
nor is it limited by Article 6703a or Sec. 15 of
Article 8280-107, V.C.S.

Very truly yours,

WAGGONER CARR
Attorney General of Texas

By: 
JAMES A. EVANS
Assistant Attorney General

JAE:bp

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