



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

MAR 6 1975

The Honorable Joe Resweber  
County Attorney  
Harris County Courthouse  
Houston, Texas 77002

Opinion No. H- 547

Re: Whether a county may regulate the placement of portable signs on the right of way of state and county roads.

Dear Mr. Resweber:

You have inquired about the authority of a county to regulate the placement of portable signs on the right of way of state and county roads in both incorporated and unincorporated areas.

Article 2351, V. T. C. S. , confers upon the commissioners court of a county general authority over that county's roads. But other statutes limit this power. Article 1016, V. T. C. S. , grants to "[a]ny city or town incorporated under the general laws of this State . . . the exclusive control and power over the streets . . . of the . . . town, and to abate and remove encroachments or obstructions thereon. . . ." (Emphasis added). Section 16 of article 1175, V. T. C. S. , declares that home rule cities have "exclusive dominion, control and jurisdiction in, over and under the public streets, avenues. . . ." (Emphasis added). Section 24 of that same statute grants to a home rule city the authority "[t]o license, regulate, control or prohibit the erection of signs or bill boards as may be provided by charter or ordinance."

We believe it is clear that the commissioners court may regulate the placement of signs on the right of way of county roads in all unincorporated areas. This conclusion is implicit in those decisions and opinions cited, infra, which discuss the authority of a county over roads located in incorporated areas. It also follows from article 6703, V. T. C. S. ,

which authorizes the commissioners court to control streets and alleys in cities and towns which have no "de facto" municipal governments.

But such blanket authority to regulate must necessarily be limited to unincorporated areas. In City of Breckenridge v. Stephens County, 40 S. W. 2d 43 (Tex. Sup. 1931), the Supreme Court held that the county commissioners court may improve city streets where such streets form integral parts of county roads or state highways and where such improvements are made without conflicting with the jurisdiction of the municipality, or with its consent or approval. The Court, quoting the early case of State v. Jones, 18 Tex. 874 (1857), explained that the phrase "without conflicting with the jurisdiction of the municipality" referred to a situation in which a city has totally failed to exercise its power to lay out and regulate roads. Where the city has acted, the county must yield.

A previous Attorney General Opinion, M-561 (1970), reached the same basic result in slightly different terms. "Where there are incorporated areas within a given county, the streets within the city are generally subject to city control." If the street forms a connecting link in the county road or state highway system, however, the county commissioners court may maintain it, provided the city has expressly or impliedly consented to such work. We interpret this "implied consent" to be functionally equivalent to the "no conflicting jurisdiction" test approved in Breckenridge, supra.

In incorporated areas, then, the county may regulate the placement of signs on county roads' rights of way only with the consent of the particular incorporated area. Consent may be express or implied, and the test for implied consent is whether the incorporated area has itself acted to regulate such signs. Whether either type of consent exists in a particular instance requires a factual determination. It is sufficient here to say that consent is a prerequisite to county regulation.

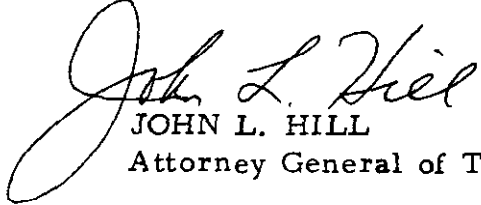
The State has authority to control the State highways. V. T. C. S., art. 6663, et seq.; Nairn v. Bean, 48 S. W. 2d 584 (Tex. Sup. 1932); Britton v. Smith, 82 S. W. 2d 1065 (Tex. Civ. App. -- Waco 1935, no writ). The county may perform certain functions in regard to control of State highways including the placement of signs, to the extent that their activities are not in conflict with the policy of the State Highway Department. See V. T. C. S., art. 6701d-11, § §11 and 13.

SUMMARY

A county may regulate the placement of portable signs on the right of way of state and county roads in unincorporated areas of the county; it may regulate the placement of such signs in the incorporated areas of the county only with the consent, express or implied, of the particular incorporated area.

A county may place portable signs on the right of way of state roads if this is not in conflict with the policy of the State Highway Department.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

lg