



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1998

The Honorable Sherry L. Robinson
Waller County Criminal District Attorney
836 Austin Street, Suite 105
Hempstead, Texas 77445

Letter Opinion No. 98-116

Re: Whether Waller County may pay for repair of
a road located within the City of Prairie View
(RQ-1108)

Dear Ms. Robinson:

You ask whether Waller County (the "county") may pay for repair of a road located within the City of Prairie View (the "city") under the authority of Transportation Code section 251.015. We conclude that section 251.015 is inapplicable, but that Transportation Code section 251.012 authorizes the county to pay for repair of the road in the circumstances you describe.

You provide the following background information: Ten years ago, the city annexed property including a portion of the county road at issue. The city's portion of the road has fallen into disrepair. The county "has offered to enter into an interlocal agreement pursuant to [Transportation Code section 251.015,] with the city, at the very least, reimbursing the County for the materials used. The city has requested that the County make the repairs to the city's portion of the road without reimbursement to the County."

You suggest that section 251.015¹ is unconstitutional, citing Attorney General Opinion JM-892, which questioned the constitutionality of the statutory predecessor to that provision, now-repealed V.T.C.S. article 2352j, under article III, section 52(a) of the Texas Constitution.² We need not reach the constitutionality of section 251.015. Attorney General Opinion JM-892 concluded

¹Transportation Code section 251.015 provides as follows:

The commissioners court of a county may use county road equipment, construction equipment, including trucks, and employees necessary to operate the equipment to assist another governmental entity on a project if:

- (1) the cost does not exceed \$3,000;
- (2) the use of the equipment or employees does not interfere with the county's work schedule; and
- (3) the county pays only the costs that the county would pay if the county did not assist the governmental entity.

²See Attorney General Opinion JM-892 (1988) at 7 n.1.

that article 2352j did not govern the authority of a county to repair a road located within the corporate limits of a municipality.³ Rather, the opinion concluded, that authority is governed by a more recent and specific legislative enactment, V.T.C.S. article 6702-1, section 2.010.⁴ That provision has been repealed and is now codified⁵ in section 251.012 of the Transportation Code, which provides as follows:

(a) With the approval of the governing body of a municipality, the commissioners court of a county may spend county money to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located in the municipality, including the provision of:

- (1) necessary roadbed preparation of material;
- (2) paving or other hard covering of the street or alley; or
- (3) curbs, gutters, bridges, or drainage facilities.

(b) County work authorized by this section may be done or financed:

- (1) by the county through the use of county equipment;
 - (2) by an independent contractor with whom the county has contracted;
 - (3) by the county as an independent contractor with the municipality;
- or
- (4) by the municipality, with the municipality to be reimbursed by the county.

(c) A county acting under this section has, to the extent practicable, the same powers and duties relating to imposing assessments for the construction, improvement, maintenance, or repair as the municipality would have if the municipality were to finance and undertake that activity.

(d) A county acting under Subsection (b) may not spend bond proceeds for the construction of a new road in a municipality unless the construction is specifically authorized in the election approving the issuance of the bonds,

³See *id.* at 7-8. The City of Prairie View is incorporated, see THE DALLAS MORNING NEWS, 1998-99 TEXAS ALMANAC AND STATE INDUSTRIAL GUIDE 297, 312 (1997).

⁴See Attorney General Opinion JM-892 (1988) at 7-8.

⁵See Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 1, 24, 1995 Tex. Gen. Laws 1025, 1154, 1870-71.

regardless of the source of the money used to acquire the equipment used to construct the road.

In Attorney General Opinion JM-892, this office interpreted former article 6702-1, section 2.010 to authorize a county to pay for repair of a road located within the corporate limits of a municipality only if the road is an integral part of or connecting link with the county's road system.⁶ Since that time, this office has construed Transportation Code section 251.012, the codification of article 6702-1, section 2.010, in accordance with Attorney General Opinion JM-892.⁷ Although this office has questioned whether Attorney General Opinion JM-892 was correct in construing the statute to authorize county repairs only if the road is an integral part of or connecting link with the county's road system,⁸ we need not reach this issue to resolve your query because you state that the road at issue *is* "an integral and connecting link."⁹ In sum, assuming the information you have provided is correct, the county is authorized to repair the road at issue under section 251.012.

You also suggest that under section 251.012, a county is to be reimbursed for the funds it expends to repair a road located within a city. We disagree. We believe it is manifestly clear from section 251.012 that it speaks to road work performed or paid for by the county. Subsection (b) of section 251.012, for example, lists the various ways a *county* may do or finance the road work authorized by the statute. Indeed, work may even be done or financed "by the municipality, *with the municipality to be reimbursed by the county.*" Transp. Code § 251.012(b)(4) (emphasis added).¹⁰

In sum, Transportation Code section 251.012 governs the situation about which you inquire. Section 251.012 authorizes the use of county funds to pay for the repair of a road that is located within the city but is an integral part of or connecting link with the county's road system provided that the commissioners court approves the expenditure¹¹ and the governing body of the city consents

⁶See Attorney General Opinion JM-892 (1988) at 8-9.

⁷See Letter Opinion No. 97-084 (1997) at 4-5.

⁸See *id.* at 4 n.13.

⁹This office is currently considering whether Transportation Code section 251.012 authorizes a county to repair a road located within the corporate limits of a municipality that is *not* an integral part of or connecting link with the county's road system in a request from Somervell County (RQ-1200).

¹⁰Given that the road at issue is an integral part of or connecting link with the county's road system, the expenditure of county funds for this purpose would appear to serve a county purpose and therefore not violate article III, section 52(a). See *id.* at 4-5 n.14.

¹¹See Attorney General Opinion JM-892 (1988) at 8 (opining that statutory predecessor to section 251.012 "confers authority on the commissioners court, which must act as a body in approving the expenditure of county funds to finance such projects"). The commissioners court's action is subject to judicial review for abuse of discretion. See *Commissioners Court of Titus County v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997).

to the repairs.¹² Finally, we stress that section 251.012 merely *authorizes* a county to pay for or undertake various road projects within the corporate limits of a municipality; it does not *require* a county to pay for or undertake them.

S U M M A R Y

Transportation Code section 251.012 authorizes a county to pay for the repair of a road that is located within a city and is an integral part of or connecting link with the county's road system.

Yours very truly,

A handwritten signature in black ink that reads "Mary R. Crouter" with a stylized flourish at the end.

Mary R. Crouter
Assistant Attorney General
Opinion Committee

¹²See Attorney General Opinion JM-892 (1988) at 8.