OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable T. D. Sansing
County Attorney
Hansford County
Spearman, Texas

Dear Sir: Opinion No. 0-5959
Re: Whether a Commissioners' Court has the authority to cancel a subdivision lying wholly outside an incorporated town, and related questions.

In your letter of April 7, 1944, you gave us certain facts, which may be summarized as follows:

There are several plats and subdivisions of record in your county, which have made a dedication of the streets and alleys shown thereon to the use of the public. Most of these subdivisions are near a town, but others are within the limits of an incorporated town. The taxing authorities desire to cancel these subdivisions so that the lots and blocks delineated thereon may be assessed for taxes as acreage.

You request our opinion upon the following questions:

"1. Does the Commissioners Court have authority to cancel a sub-division lying wholly outside of any incorporated town?

"2. Does the Commissioners Court have authority to cancel a sub-division located within the boundaries of an incorporated town?

"3. Does the city, acting through the Mayor and Commissioners, where the town is incorporated, have the authority to cancel

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a subdivision or plat located wholly within the limits of said town?"

Article 7227, R. C. S. 1925, makes provision for canceling subdivisions not in an incorporated city or town, as follows:

"Any person, firm, association or corporation owning lands in this State, which lands have been subdivided into lots and blocks or small subdivisions, may make application to the Commissioners court of the county wherein any such lands are located, for permission to cancel all or any portion of such subdivision or subdivisions, so as to throw the said lands back into acreage tracts as it existed before such subdivisions were made. When such application is made by the owner or owners of such land, and it is shown that a cancellation of such subdivisions, or portion thereof, will not interfere with the established rights of any purchaser owning any portion of such subdivisions, or if it be shown that said person or persons agreed to such cancellation, said commissioners court shall enter an order, which order canceling said subdivision shall be spread upon the minutes of such court, authorizing such owner or owners of such lands to cancel the same by written instrument describing such subdivisions, or portions thereof, so canceled as designated by said court. When such cancellation is filed and recorded in the deed records of such county, the tax assessor of such county shall assess such property as though it had never been subdivided. When such application is so filed, said court shall cause notice to be given of such application by publishing such application in some newspaper, published in the English language, in such county for at least three weeks prior to action thereon by said court, and action shall be taken on such petition or petitions at a regular term of said court. Such notice, in addition to said publication, shall command any person interested in such lands to appear at the time specified in such notice to protest if desired against such action. If such lands are delinquent for taxes for any preceding year, or years, and such application is granted as hereinbefore provided, the owner or owners of said land shall be permitted to pay such delinquent taxes upon an

> acreage basis, the same as if said lands had not been subdivided, and for the purpose of assessing lands for such preceding years the county assessor of taxes shall back assess such lands upon an acreage basis. This law shall not apply to any lands or lots included in an incorporated city or town."

The above statute has been held to be within the constitutional grant of power conferring upon the Commissioners' Court jurisdiction over county business. Eidelbach vs. Davis, 99 S. W. (2) 1067.

In discussing what effect should be given an order of the Commissioners' Court of Galveston County granting one Eagle the right to convert back into acreage a part of the land included in a subdivision plat, the Court in Eidelbach v. Davis, supra, said:

> "It should be borne in mind that easements in streets and public parkways may be either of a public or a private nature. When the dedicator of an addition files a plat dedicating streets, alleys, and parkways to public use, the public in general acquires an easement in the streets, alleys, and parkways thus dedicated to the public use. But persons purchasing lots in accordance with such plat acquire an additional right to the use of such streets, alleys, and parkways by reason of their contract of purchase. In this case the original plat of the townsite of San Leon and the words of dedication which accompanied it constituted a representation to prospective purchasers of lots in the townsite that the street and parkways should be kept open for use of the lot owners and the public in general. The existence of such dedicated streets and parkway added to the value of the lots purchased by the interveners and other purchasers. And in acquiring their property in accordance with said plat and dedication the interveners had a right to rely upon the implied representation made by the dedicator that the street and parkway so dedicated to the public would never be put to any use inconsistent with the use to which they were dedicated. Such right, it will be observed, arose out of the contract and is quite separate

> and distinct from the right inuring to the general public by reason of the dedication. It is a well-settled rule in Texas that the two classes of easements, the one inuring to the public in general by the filing of the plat and dedication, and the other inuring to lot purchasers by reason of their contract, are separate and distinct rights which may coexist in contemporaneous and harmonious operation and one may be destroyed without necessary impairment of the other. That is to say, the proper public authority may vacate and close, or relinquish, the public easement without impairing any private or contractual rights which may exist in the easements affected. . . .
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> "The town of San Leon is not and never has been an incorporated town, and it is our conclusion that the commissioners' court of Galveston county had the power, by virtue of the statute in question, to relinquish the public rights in the street and parkway by authorizing Eagle, the landowner, to rescind the dedication.
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> "But what about the private or contractual rights in easements? Obviously, such rights could not be destroyed, or in any way impaired, by the order of the commissioners' court. The interveners and other lot owners had acquired their lots long before the order was entered. Their rights had vested and they could not be divested by such proceeding. . . ."

We answer your first question, Article 7227 does not authorize the Commissioners' Court to cancel all or any portion of such subdivisions therein described, but authorizes the owner to cancel the same in the manner therein prescribed.

Since Article 7227 expressly provides that, "This law shall not apply to any lands or lots included in an incorporated city or town", we answer your second question, no.

We do not answer your third question, because the matter involved does not come within our jurisdictinn,

and we must therefore respectfully decline to express any opinion about it.

Thanking you for your able brief, which was attached to your letter, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Thos. B. Duggan, Jr.
Assistant

TBD:BT

APPROVED OPINION COMMITTEE BY BWB CHAIRMAN