



Office of the Attorney General  
State of Texas

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ATTORNEY GENERAL

October 23, 1995

Honorable Ben W. "Bud" Childers  
Fort Bend County Attorney  
309 South Fourth Street, Suite 621  
Richmond, Texas 77469

Letter Opinion No. 95-064

Re: Authority of a county to enforce  
speed limits on roads in a subdivision  
dedicated to the public but not accepted  
into the county road system (ID# 33243)

Dear Mr. Childers:

You ask whether "the county constables or deputy sheriff[] [may] issue traffic citations to drivers speeding on [a] subdivision's publicly dedicated streets." You say that "[t]he developer has filed a plat dedicating the subdivision streets to the public[;] however, the County Commissioners Court has not accepted the same for road maintenance." Your questions concern Fort Bend County.

Chapter 232, Local Government Code, requires a subdivider of a tract in an unincorporated area to prepare and have recorded in the county clerk's office a plat of the subdivision. The plat must show among other things, streets and other areas "to be dedicated to public use." Local Gov't Code § 232.001. The plat may not be recorded until the plat has been approved by the commissioners court. *Id.* § 232.002; Prop. Code § 12.002(a).

Provisions formerly in the County Road and Bridge Act, V.T.C.S. art. 6702-1, but codified without substantive change as part of the Transportation Code in 1995, authorize county commissioners courts to "regulate traffic on a county road or on real property owned by the county that is under the jurisdiction of the commissioners court" and to set speed limits on such roads. Transp. Code §§ 251.151, .154; *see* S.B. 971, Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24 (repealer), 25 (code as nonsubstantive revision), 27 (code effective September 1, 1995), 1995 Tex. Sess. Law Serv. 1025, 1870-71. A road does not become part of the county road system merely by virtue of a dedication of the road to the public in a subdivision plat. The dedication must be accepted by the county. Attorney General Opinion JM-200, in responding to the question whether a county was authorized to maintain subdivision streets dedicated to the public in a filed subdivision plat, stated: "[T]he filing of a subdivision plat alone is insufficient to authorize a county to maintain roads in rural subdivisions, since the dedication is a mere offer." Attorney General Opinion JM-200 (1984) at 4. "The mere filing and approval of a subdivision plat showing streets to be dedicated does not constitute an acceptance." *Id.* (citing *Commissioners Court v. Frank Jester Dev. Co.*, 199 S.W.2d 1004 (Tex. Civ. App.--Dallas 1947, writ ref'd n.r.e.)). The opinion indicated that the commissioners may

expressly accept the road dedication by vote and notation in its minutes, or impliedly accept the dedication by, *e.g.*, maintaining the road or platting it on official maps.<sup>1</sup>

Other provisions, formerly in the Uniform Act Regulating Traffic on Highways, V.T.C.S. article 6701d, but codified in 1995 as part of the Transportation Code, recognize the authority of local authorities such as counties to regulate traffic "with respect to a highway under [their] jurisdiction." Transp. Code § 542.202. However, section 541.302(5) of the Transportation Code defines "highway or street" as "the width between the boundary lines of a publicly maintained way any part of which is open to the public for vehicular travel."<sup>2</sup>

Assuming, as you say, that Fort Bend County has not accepted the dedication here, the road in question has not become part of the county road system or become subject to county maintenance authority.<sup>3</sup> Thus, under neither the provisions of section 542.202 relating to "publicly maintained" roads, nor those of sections 251.151 and 251.154 relating to "county roads" and "real property owned by the county," do we find authority for the county to regulate the roads you ask about by setting or enforcing speed limits thereon.<sup>4</sup>

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<sup>1</sup>See generally 36 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 40.6 (Texas Practice 1989) (Although a road may be a "public road," in the sense that "the public has a right to use it," "the county is not necessarily responsible for its maintenance." "The county has the option of determining which roads it wants to bring into the county road system for maintenance . . .").

<sup>2</sup>Section 542.006 provides a mechanism for owners of property abutting a private road, in subdivisions with 400 or more residents and for which "a plat has been filed . . . in the deed records of the county," to petition the State Highway and Public Transportation Commission to extend the speed restrictions of the act to said road. See Transp. Code § 541.302(9) (defining "private road"); see also *id.* ch. 545, subch. H (speed restrictions). Subsection (e) of section 542.006 provides that if the commission issues such order, "the private road is a public highway for purposes of setting and enforcing speed restrictions." We do not address here whether owners of property in the subdivision here might be able to avail themselves of the provisions of section 542.006. However, based on the indications, or lack thereof, in your brief and the brief submitted on behalf of the subdivision here, we assume for purposes of this opinion that they have not.

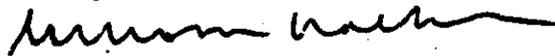
<sup>3</sup>Please note that we limit our conclusion here to Fort Bend County and do not address here provisions not applicable to Fort Bend County. See, *e.g.*, Transp. Code ch. 281 (acquisition of public interest in private road in counties of 50,000 or less population).

<sup>4</sup>We note that Local Government Code section 81.028 more generally authorizes a commissioners court to "lay out and establish, change, discontinue, close, abandon, or vacate public roads and highways" and to "exercise control over all roads, highways, ferries, and bridges in their counties." We do not believe these general provisions in section 81.028 should be construed to expand county authority to regulate and enforce speed limits on roads in the county beyond the specific authority to do so given in the Transportation Code provisions discussed.

**S U M M A R Y**

The mere filing and approval of a subdivision plat dedicating subdivision roads to the public does not authorize Fort Bend County to regulate and enforce speed limits on such roads. In order to have such authority, the county must have accepted the road for maintenance as part of the county road system.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee