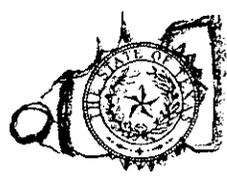


RQ-795



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JUN 10 95

Sherry L. Robinson

Criminal District Attorney
Waller County

Opinion Commission

836 Austin Street
Suite 109
Hempstead, Texas 77445

(409) 826-3357 x 118
(713) 463-2129
(409) 826-8471 Fax

December 12, 1994

Mr. Dan Morales
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

SJS 32805
file ML-31207-95
JDH 31207
32805

Dear Mr. Morales:

On behalf of the Waller County Commissioner's Court, I request a written legal opinion on the following matter:

In approximately 1947 or 1948, Waller County adopted the Optional County Road Law of 1947, Vernon's Ann. Civ. St. Art. 6716-1. It has come to my attention that Art. 6716-1 was repealed in 1983 by Acts 1983, 68th Leg., p. 1526, ch. 288, section 2.

Does the fact that the statute was repealed render Waller County's adoption moot? If so, are the Commissioners Court's powers regarding county roads now automatically governed by Art. 6702-1? If so, and the county wants to continue operating under the Unit System, is any further action on the part of the county, such as a new election, required?

Finally, based on your opinion regarding the above questions, i.e. which system Waller County is currently operating under, is Waller County required to hire a licensed professional County Road Engineer? Also, does the language which, paraphrased, states that the commissioners court may employ a county road administrator if it is not able to employ a County Road Engineer, include financial inability and/or not enough work for a full-time position? What reasons are sufficient to meet the "not able" standard?

Attached is a copy of the opinion issued by my office in its capacity as legal advisor to the Court. If you have questions

Travis L. McDonald
Asst. District Attorney

Rick Fogle III
Asst. District Attorney

Michael L. Glover
Asst. District Attorney

regarding this matter, you may contact me at (409) 826-3357 ext. 118. I thank you in advance for your prompt response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rhonda Rieken", with a long horizontal flourish extending to the right.

Rhonda Rieken
Assistant District Attorney



Sherry L. Robinson
Criminal District Attorney
Waller County

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December 5, 1994

Commissioner Frank Pokluda
Waller County Commissioner, Precinct #2
Rt. 2, Box 289
Waller, Texas 77484

Honorable Commissioner Pokluda:

You requested an opinion on whether Waller County must employ a licensed professional engineer in the position of County Road Engineer. I am retracting the opinion that I issued to you earlier today in light of the conversation I had this afternoon with John Fuller of the Texas Attorney General's Office.

I called to ask Mr. Fuller his opinion of whether Waller County is required to employ a County Road Engineer. He stated that the County is only required to do so if it has adopted the optional county road system. At this point I informed him that Waller County had indeed adopted the Optional County Road Law of 1947. I then pointed out that the statute had been repealed in 1983, and the distribution tables did not list a recodification of the statute.

Mr. Fuller stated that, yes, the statute had been repealed and technically not recodification. He also stated that this was a very good legal question that had never been challenged and, thus, he could only tell me how his office chooses to interpret it pending any official legal opinion. Currently, his office interprets the Optional Road Law of 1947 as recodified in Art. 6702-1, section 3.204. He states that the legislature intended a nonsubstantive recodification, and that there was apparently an inadvertent mistake in the distribution tables. Therefore, although he agrees that my opinion is technically correct in stating that the county should have a new election if it wants to continue the unit system under Art. 6702-1, section 3.204, the Attorney General's Office, based on their understanding of the legislature's intent, has chosen to allow counties operating under the unit system in 1983 to continue to do so without further action.

Therefore, it is my opinion that the Commissioners Court powers relating to public roads are now set forth in the County Road and Bridge Act, Vernon's Ann. Civ. St. art. 6702-1, section 3.204, the Optional County Road System. Under this section, Waller County is required to employ a County Road Engineer; Mr. Fuller states that once a county adopts the optional law, the discretion is generally taken out of the Commissioners Court's hands.

However, the statute also states that "[i]f the commissioners court is not

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able to employ a licensed professional engineer for any reason, the commissioners court may employ a qualified road administrator." I asked Mr. Fuller for his office's interpretation of "not able" "for any reason." He stated his unofficial interpretation as follows: The county may employ a qualified road administrator if, and only if, after a posting of the position, no person with reasonable qualifications applied or could be employed. If a qualified individual applies for the position, the County is required to employ a County Road Engineer.

I apologize for any delay my earlier interpretation may have caused the Commissioners Court. Again, I clarify that my earlier opinion is technically correct, this letter relates the unofficial opinion of Mr. Fuller and the Texas Attorney General's Office, and Mr. Fuller would welcome any request for an official legal opinion on this unchallenged matter. If you have questions regarding this letter, please contact me at 826-3357 ext. 118.

Respectfully,



Rhonda Rieken
Assistant District Attorney

cc: Waller County Judge Freddie Zach
Commissioner Delmar Barry, Precinct #1
Commissioner Frank D. Jackson, Precinct #3
Commissioner Eddie Neuman, Precinct #4
Sherry Robinson, Waller County District Attorney