



**Sherry L. Robinson**  
 Criminal District Attorney  
 Waller County

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Opinion Committee

836 Austin Street  
 Suite 105  
 Hempstead, Texas 77445

(409) 826-7718  
 (409) 826-7722 Fax

March 5, 1998

*RQ-1108*

Ms. Sarah Shirley  
 Office of the Attorney General  
 Opinion Committee Chief  
 Price Daniel Bldg.  
 209 W. 14th & Colorado St.  
 P. O. Box 12548  
 Austin, Texas 78711-2548

FILE # ML-40130-98  
 I.D. # 40130

Dear Ms. Shirley,

The Criminal District Attorney of Waller County respectfully requests the Attorney General issue a formal opinion on the interpretation of the following statutory provisions: article 2352j repealed and recodified as §251.015 of the Transportation Code and Article III section 52 of the Texas Constitution.

As background information, approximately ten years ago, the City of Prairie View, Texas, annexed property including a portion of a county road, which, up until the annexation, was maintained by the County. The city has gained revenue off of this road. In the last several years, the city's portion of the road has fallen into serious disrepair, with short term repairs estimated at approximately \$5,000 and more extensive repairs of around \$40,000. The county has offered to enter into an interlocal agreement pursuant to §251.015 of the Transportation Code 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.

Reading §251.015 in light of the constitution, specifically Article III section 52, is it proper for the County to make the repairs to the city's road, that is an integral and connecting link, without reimbursement, or would this amount to engaging in the unconstitutional expenditure of county funds?

In Opinion JM-892, FN1 indicated that then article 2352j raises constitutional concerns under Article III section 52 of the Texas Constitution. Waller County feels this constitutional concern is still a prevalent one that is not currently addressed by §251.015 of the Transportation Code because there is no express requirement for reimbursement.

**David Barron**  
 Asst. District Attorney

**Claudia T. Bridges**  
 Asst. District Attorney

**Chad Bridges**  
 Asst. District Attorney

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The footnote also contained mention of an amendment to the Constitution that would have allowed this type of expenditure without reimbursement that was defeated in 1987. This seems to indicate that the express requirement is not necessary and that the statute is to be read in light of the constitutional tenets.

Every statutory provision involving interlocal agreements indicate that a County **may** enter into interlocal agreements to perform work within an incorporated city. There is no provision that compels the County to provide assistance. But without any requirement on compensation, what is to keep a city from neglecting a road and conserving its resources, and then seek assistance from the County without any costs whatsoever to the city?

The case law that states that a city would merely receive an incidental benefit does not seem to be strong enough to trump the basic Constitutional tenet that the County cannot give away goods services, equipment and funds. Without any reimbursement to the County, wouldn't the city become more than an incidental beneficiary?

Section 251.012 allows a County to finance a project, which would indicate that the County is to be reimbursed for the funds that are expended. How is that provision to be interpreted along with the Constitution and section 251.015?

Please acknowledge receipt of this request and feel free to contact me with any questions about this matter.

In advance, I thank for your assistance and attention to this matter.

Sincerely,

  
Claudia T. Bridges  
Assistant District Attorney

cc: Ms. Lisa M. Lemaczyk  
900 Congress Avenue  
Suite 200  
Austin, Texas 78701

Commissioner Frank Pokluda  
836 Austin St., Suite 201  
Hempstead, Texas 77445

Mayor Ron Leverett  
Highway 290  
Prairie View, Texas 77484

Honorable Freddie Zach  
836 Austin St., Suite 201  
Hempstead, Texas 77445

Commissioner Frank Jackson  
836 Austin St., Suite 201  
Hempstead, Texas 77445

Commissioner Leroy Singleton  
836 Austin St., Suite 201  
Hempstead, Texas 77445

Commissioner Eddie Neuman  
836 Austin St., Suite 201  
Hempstead, Texas 77445