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Opinion Committee

ATTORNEY GENERAL'S OFFICE
928 Elizabeth Robinson
RQ-0103-99

REQUEST FOR AN ATTORNEY GENERAL'S OPINION

Question

Whether or not the commissioner's court may accept and maintain roads in a subdivision that is a gated subdivision.

Facts

There is a subdivision in Bastrop County outside of any city that has a multitude of acre plus tracts. The subdivision has deed restrictions and also has locked gates at the entrance. Only the residents of the subdivision have access to the combination to unlock the gates. The residents of the subdivision pay county road and bridge taxes the same as any other citizen owning property in Bastrop County. There is no access to the subdivision by the general public except by the owners of property in the subdivision or their invited guests. The roads are over 20 feet wide and are paved according to subdivision standards.

Law

In quoting from Texas Practice Brooks County & Special District Law Sec. 40.22 "It is generally unlawful to maintain an obstruction in a roadway; the County Road and Bridge Act requires all county roads of the 1st, 2nd and 3rd class to be free of obstruction "Vernon's Ann, Civ. State Art. 6702-1 subsection 2.007 and various cases. "Under the County Road & Bridge Act gates may be maintained only across 3rd class county roads acquired without cost to the county. The gate must be at least 10 feet wide and free of any obstruction overhead." "The gate must be unlocked." Again quoting Brooks Section 40.10 a 3rd class road may not be less than 20 feet wide. There is no maximum width.

There is good argument for allowing gated communities in the county, as generally they are more expensive homes that generate more tax revenue for the county and create less work for law enforcement in the answering of calls and investigation of burglaries. Please give me an opinion concerning this request.

Respectfully submitted,
Charles D. Penick
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Criminal District Attorney