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OPINION COMMITTEE

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Greg Abbott
Attorney General of Texas
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R.Q.-0316-GA

Dear Sir:

Louis Canales, Waller County Commissioner, Precinct Four, has requested that I seek the opinion of your office regarding whether the county may accept a gift deed of a private road (or an easement over the private road) and accept it into the county road maintenance system. My brief of the relevant law is enclosed.

Thank you for your assistance.

Sincerely,

Debra S. Mergel

Debra S. Mergel

Several owners of property within a subdivision have approached their commissioner regarding whether the county will accept one of the private roads, Lynnwood Lane, into the county road maintenance system. The subdivision was platted and recorded in February of 1967; the roads are marked "private road" on the plat. The landowners have agreed to furnish all materials necessary to upgrade the condition of Lynnwood Lane to the gravel road standard that was in place in February of 1970. Also, the landowners have agreed to grant to Waller County an easement over the private road, or perhaps a gift deed to the land. A search is underway to determine which persons actually own the land.

It has been suggested by one commissioner that the county cannot accept the private road without following the procedures of Texas Transportation Code Chapters 253 and 281. See Texas Attorney General Opinion GA-139. A county, through its commissioners' court, has only the authority specifically given to it by the state constitution and statutes. Texas Transportation Code Chapter 253 sets forth a method by which the county may improve subdivision roads and assess the costs to the landowners. This method includes notice, public hearing, voting by the landowners to be assessed, and liens against the properties until the assessment is paid.

Texas Transportation Code § 281.002(3) allows a county to acquire a public interest in a private road by dedication. The only other three methods of acquisition are purchase, condemnation, or a court's final judgment of adverse possession. Section 281.003 states that any dedication must be an explicit voluntary grant of the use of a

private road for public purposes; and must be communicated in writing to the commissioners' court.

Texas Local Government Code § 81.032 authorizes commissioners' court to accept a "gift, grant, donation, bequest, or devise of money or other property" on the county's behalf, in order to perform a function allowed the county. See also Texas Attorney General Opinion GA-0229. In addition, Texas Transportation Code § 252.214 allows the commissioners' court to "accept donations of labor, money, or other property to aid in building or maintaining roads in the county." See also Texas Attorney General Opinion JC-0073.

Where a right is conferred on it by constitution or statute, the commissioners' court has "implied authority to exercise broad discretion to accomplish the purposes intended." Texas Attorney General Opinion JC-0073. As the county has the right to acquire a public interest in a private road, and has the right to accept gifts or donations to aid in building or maintaining roads (a function allowed the county), it appears that the commissioners' court may accept the easement or deed along with the materials and accept Lynnwood Lane into the Waller County road maintenance system.