



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2009

The Honorable G.A. Maffett, III
Wharton County Attorney
309 East Milam, Suite 500
Wharton, Texas 77488

Opinion No. GA-0703

Re: Authority of a commissioners court to remove
fencing located within a county right-of-way (RQ-
0749-GA)

Dear Mr. Maffett:

You ask whether a county has the "authority to remove fencing located within a county road right-of-way that the Commissioners Court determines interferes with the safety and transportation of the public [.]" ⁽¹⁾ You describe the nature of the fence at issue as dangerous and tell us that the "Commissioners Court determined the fence obstructed the public's ability to safely travel and ordered the fence removed . . ." Request Letter at 3; see *id.* (attached Order, finding that "fence is a hazard and constitutes an obstruction to the public's safety, use and transportation" of the county road).

The Legislature has granted commissioners courts authority to "exercise general control over all roads, highways, and bridges in the county." Tex. Transp. Code Ann. § 251.016 (Vernon Supp. 2008). In addition, section 251.003 of the Transportation Code authorizes a commissioners court to "make and enforce all necessary rules and orders for the . . . maintenance of public roads." *Id.* § 251.003(a)(1) (Vernon 1999). With respect to this general authority, the Texas Supreme Court has stated that the "Legislature imposed on [county commissioners courts] a duty to make the roadways safe for public travel." *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 31-32 (Tex. 2003) (construing statutory predecessor to section 251.016). The Transportation Code further provides that a public road of all classes must "be clear of all obstructions." *Id.* § 251.008(1).

Based on the authority found in the Transportation Code, this office has previously concluded that a county commissioners court may remove or order the removal from a county road right-of-way objects that create a safety hazard to the public. See Tex. Att'y Gen. Op. Nos. GA-0430 (2006) at 3-4 (abandoned mobile home); JM-1241 (1990) at 2 (trees or shrubs); M-534 (1969) at 4 (obstruction). The determination of whether a particular item creates a public safety hazard is a fact determination for the commissioners court to make in the first instance, subject to judicial review. See Tex. Att'y Gen. Op. No. GA-0693 (2009) at 1 (concluding question whether mailboxes create a public safety hazard is a fact question not appropriate for the opinion process); Request Letter (attached Order, finding that "fence is a hazard and constitutes an obstruction to the public's safety, use and transportation" of the county road).

SUMMARY

A county commissioners court has authority, subject to judicial review, to remove from a county road right-of-way objects that create a safety hazard to the public.

Very truly yours,

GREG ABBOTT
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Assistant Attorney General, Opinion Committee

Footnotes

1. See Request Letter at 1 (*available at* www.texasattorneygeneral.gov).

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