Jon Kleinheksel

From: Greg Hudson <ghudson@holaw.net>
Sent: Monday, July 09, 2012 5:44 PM
To: Jon Kleinheksel
Cc: Bill Bilyeu
Subject: Mutual Boundary Roads and sharing of upgrading costs
Attachments: ltr to Kleinheksel regarding Mutual Boundary Roads and upgrading same (7-09-12 gh).pdf; Interlocal template for road work to be paid under payment plan (clean 7-09-12).doc

Jon,

Here is my letter to you regarding the Mutual Boundary Roads and the sharing of costs for upgrading them by the affected municipalities. As you know from our discussion, there are no provisions in state law that would grant the County lien rights or other remedies should a municipality fail or refuse to pay its share of the costs of upgrading the Mutual Boundary Road. The applicable statute, attached to my letter simply grants the County the authority to perform the work, but does not give the County any lien rights or other rights to repayment.

I concur with the County's efforts to get paid for the City's share through an interlocal agreement. I have revised the template interlocal agreement that you shared with me to add as many enforcement rights as I believe the law allows. In addition, I have added a provision in the agreement for the Mayor and the County Judge to meet prior to the passage of any municipal budget that fails to appropriate funds in amounts sufficient to cover the city's payment obligations. My revised draft is attached. I welcome your comments.

However, absent the City's issuance of bonds and the creation of a binding tax pledge and an interest and sinking fund sufficient to guarantee repayment to the County, there is little the County can do by way of contract provisions to limit a City's right to terminate a multi-year contractual obligation through non-appropriation. You will recall that we used the same legal principles against the NRCS in connection with the County's dam maintenance agreements (the argument being that the County's multi-year financial obligations in those agreements constituted illegal debts). Those same principles are applicable to any multi-year interlocal agreements for the upgrades to the Mutual Boundary Roads.

Should a City terminate an interlocal with the County through non-appropriation, it would hurt the City's credit rating for issuing bonds or other debt instruments in the future. But, that is of little consequence to the County as it would be on the hook for the project costs without recourse against the City.

I am happy to discuss this with you and Duncan, as I know he wants the County to strengthen its contracts for these projects as much as is possible.

I look forward to hearing from you.

Thanks
Greg

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July 9, 2012

Mr. Jon Kleinheksel,
Director, Collin County Public Works
700-A Wilmeth Road
McKinney, Texas 75069

Re: County authority regarding recoupment of repair and maintenance of shared County Roads

Dear Jon:

This letter is in response to your question concerning the County's authority to recoup amounts spent by the County to repair and/or maintain Mutual Boundary roads; that is roads that are partially owned by the County and a municipality whose municipal boundaries extend onto the road.

For example, in 1966 the City of Van Alystene strip annexed a two-foot strip in the middle of a county roadway. Later, the City of Anna attempted to strip annex a five-foot strip along the centerline but drew a court challenge from Van Alstyne as it overlapped with Van Alstyne's earlier annexation. So, as a result of the lawsuit settlement Anna is left with a strip one and one-half feet wide on the south side of Van Alstyne's two-foot strip in the center of the road, with the County owning the remainder. Technically, three and one-half feet of the roadway are in the municipal boundaries of the cities of Van Alstyne and Anna.

The County now proposes to pave the Mutual Boundary roads pursuant to its Commissioners Court order of November 2011, as a continuation its 2005 commitment to pave all County roads so as to recognize economic, safety and environmental benefits.

Given portions of the Mutual Boundary roads are owned by municipalities, it is logical that such municipalities share proportionally in the costs of the roadway upgrades. The County has offered the participating municipalities a menu of remuneration options for city staff to consider, along with a template interlocal agreement. The County Public Works Department has circulated a letter to the affected municipalities offering to perform the paving work with no labor and equipment charge and further offering upon completion to invoice the municipality for only one-half of the cost of materials, thereby affording the municipality a substantial savings in total project cost as compared to an outside contractor. The County has prepared a template interlocal agreement to

memorialize these understandings, including the amounts to be paid by the participating municipalities.

Several of the targeted municipalities have indicated to the County that due to budget constraints they do not have the funding to pay their respective share of the road upgrades. The County Commissioners have asked whether the work can be performed by the County Public Works Department with the affected municipalities having a legal duty under the law to repay the County.

I have researched Texas law on this issue and can find no provisions which would grant the County a lien, or other repayment right against a municipality, should the County proceed with the road upgrades without a valid contract with the affected municipality. While there exist provisions in Chapter 251 of the Transportation Code (namely section 251.012, copy attached) which allow Counties to spend County money for the improvement or repair of a street in a municipality located in the County, these provisions do not grant the County lien rights or other reimbursement guarantees.

For this reason, I urge the County to seek to enter into interlocal agreements with the affected municipalities with such agreements providing for ultimate recoupment by the County of the City's share of such costs as a matter of contractual agreement, which would be generally enforceable in a court of law, such there occur a breach of contract through nonpayment.

However, municipalities, like counties, are limited in their authority to enter into multi-year financial obligations, and can generally terminate such agreements without penalty through non-appropriation. An act of non-appropriation to avoid a contractual obligation would be detrimental to a city's credit rating, but nevertheless effective in terminating a multi-year payment obligation arising under a contract with a third party, including the County.

I am happy to discuss this matter with you further.

Sincerely,

J. Greg Hudson

Sec. 251.012. COUNTY AUTHORITY IN MUNICIPALITY. (a) With the approval of the governing body of a municipality, the commissioners court of a county may spend county money to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located in the municipality, including the provision of:

(1) necessary roadbed preparation or material;

(2) paving or other hard covering of the street or alley;

(3) curbs, gutters, bridges, or drainage facilities; or

(4) any construction, improvement, maintenance, or repair allowed under Section 791.032, Government Code, if the commissioners court finds that the county will receive benefits as a result of the work on the street or alley.

(b) County work authorized by this section may be done or financed:

(1) by the county through the use of county equipment;

(2) by an independent contractor with whom the county has contracted;

(3) by the county as an independent contractor with the municipality; or

(4) by the municipality, with the municipality to be reimbursed by the county.

(c) A county acting under this section has, to the extent practicable, the same powers and duties relating to imposing assessments for the construction, improvement, maintenance, or repair as the municipality would have if the municipality were to finance and undertake that activity.

(d) A county acting under Subsection (b) may not spend bond proceeds for the construction of a new road in a municipality unless the construction is specifically authorized in the election approving the issuance of the bonds, regardless of the source of the money used to acquire the equipment used to construct the road.

(e) The authority granted by this section is in addition to the authority of a county provided by a local road law.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 671, Sec. 2, eff. Sept. 1, 1999