

LETTER of THE LAW

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SOLUTIONS THROUGH RESEARCH

COUNTRY ROAD TAKE ME HOME

As more and more Texans move to rural areas, the use of county roads increases. Prospective buyers and rural landowners encounter unique issues concerning road use. For example, is it legal to place gates and cattleguards across county roads? When can a road be closed, abandoned or vacated? How can a new road be opened? Can caliche be condemned for a road if the owner does not wish to sell? Answers to these and other questions are found primarily in the Texas Transportation Code.

Authority over county roads is vested in the county commissioner's court (the court). The key, though, to the installation of gates and cattleguards across roads depends on classification. The statute requires the court to classify roads as first-class, second-class or third-class. The classification depends on the width, not volume of traffic. The dimensions are as follows:

- First- and second-class roads must be between 40 and 100 feet wide with at least a 16-foot causeway (the raised road bed).
- Third-class roads must be between 20 and 40 feet wide with a causeway between 12 and 16 feet.
- Neighborhood roads, a fourth type, classified solely by their purpose, are between 15 to 30 feet. These roads, not

maintained by the county, are condemned to provide landowners access to landlocked property. For more information, see the Center's publication number 1130, "Don't Fence Me In."

Within limits, persons with third-class or neighborhood roads on their property may erect gates at least ten feet wide. The gates must be free of overhead obstructions and capable of being opened and shut without unnecessary delay to travelers. Also, the gates must be constructed with a fastener to hold the gate open. The property owner is responsible for maintaining the gates and approaches. Landowners who fail to comply with the standards may be fined, as well as travelers who willfully or negligently leave a gate open.

In counties having a population of less than 60,000, the court may permit the installation of cattleguards on third-class roads according to certain specifications. Likewise, in the same counties, the court may place a cattleguard on the rights-of-way for the best interest of the residents.

In addition to classifying the roads, the court may adopt uniform standards for naming and assigning addresses to adjoining property. Before adopting the standards however, the court must conduct a public hearing.

The authority of the court to open and close county roads is

addressed extensively. According to the statutes, the court may order public roads laid out, discontinued, closed, abandoned, vacated or altered. The court may even assume control of streets and alleys in municipalities not having an active governmental body.

The statute defines the relevant terms.

- *Abandon* – to relinquish the public's right-of-way in and use of the road
- *Discontinue* – to discontinue the maintenance of the road
- *Vacate* – to terminate the existence of the road by direct action of the commissioner's court of the county

The statutes elaborate further on *abandonment*. A road is deemed abandoned when used so infrequently that one or more adjoining property owners enclose it with a fence for 20 continuous years. Once abandoned, the road cannot be reestablished as a public road except in the manner of a new road. However, this method may not cause an abandonment to roads leading to cemeteries or access roads reasonably necessary to reach adjoining property.

An entire first- or second-class road cannot be closed unless the road has been vacated or unused for at least three years.

When a road is closed, abandoned or vacated, a copy of the order must be filed in the county deed records. This

serves as the official instrument conveying title from the county to the owner(s) of the abutting property. Owners on each side of the road receive title to the center line when the roadway is acquired by easement. If the road is taken in fee, the court may sell the land, giving the abutting landowners preferential right to purchase.

Owners abutting the portion of the road being closed, abandoned or vacated, or those who will be landlocked by the closure may contest the action. The affected owners must seek injunctive relief within two years after the court adopts the order (Texas Civil Practice and Remedies Code, Section 16.005). Owners who abut the roadway at points other than the portion being closed, abandoned or vacated may seek damages for depreciation to their land or for impaired access to their property.

An initiative to open, discontinue or relocate a road may begin by application from property owners within the precinct. The applicants (landowners) must give notice by posting their intent at the courthouse door and two other places in the vicinity of the affected route. The posting must occur at least 20 days prior to the court application.

The application must specify the beginning and termination points of either the proposed road or the road to be discontinued, and it must be signed by eight property owners in the precinct. If the application is for relocation, only one property owner need sign. The statute does not require the description of the proposed new location, but it should be included.

To facilitate the opening of new roads, the court has the power to condemn right-of-way easements (Texas Local Government Code, Section 261.001). To link the county road system, the court has power to condemn rights-of-way in municipalities with the consent of the governing bodies. Finally, counties with population of 50,000 or less may condemn a public interest in private roads.

The court serves as the supervisor of the public roads unless the county adopts one of the optional systems of administration.

Road supervisors play an important role in the use and maintenance of county roads. A county commissioner who serves as a road supervisor must view (supervise) the public roads in the commissioner's precinct at least once a month. A sworn report must be submitted at each regular term of the court showing the:

- condition of each road, culvert and bridge in the precinct;
- amount of money held by overseers to be spent on the roads;
- number of mileposts and finger boards defaced or torn down;
- new roads that should be opened;

- necessary improvement with estimated costs needed to place the roads;
- bridges and culverts in good condition and
- names of the overseers who failed to work the roads or neglected to perform duties.

The report, entered into the minutes of the court, is used for improving public roads and for determining the amount of taxes levied for them. It also is submitted to the grand jury with each contract made by the court.

The court serves as the supervisor of the public roads unless the county adopts one of the optional systems of administration (Chapter 252). These include the ex officio and road commissioner systems and the road superintendent or county road department systems. Also,

the court may delegate this responsibility to the county engineer.

The statutes give the court broad powers for the construction and maintenance of county roads. The court may make and enforce rules and orders necessary for:

- hiring and purchasing the labor, machinery and equipment;
- ordering the use of inmates in county jails to work on county roads and bridges and
- using necessary and convenient materials to build, repair and maintain the roads regardless of the location of the materials or extent needed.

To acquire needed road material, such as caliche, the court may condemn the items if the

owner rejects its offer to purchase (Section 251.006).

Also, the court is granted in limited circumstances, the power to improve (construct or repair) roads in or leading to subdivisions. The court may improve the roads to county standards and assess all or part of the costs pro rata against the record owners of the subdivision (Chapter 253).

Basically, notice of the proposal must be published twice in a local newspaper followed by a public hearing 31 days later. The proposal must then be approved by a vote of a majority of the subdivision owners.

To secure the assessment, a lien is filed on each lot owner effective the date written notice of the assessment is sent. The assessment lien is inferior only to tax liens or mortgage liens recorded before the date.

A subdivision road improved under the statute becomes a county road. Thereafter, the court must maintain it according to county standards.

Persons who operate a vehicle negligently and cause damage to roads or bridges are liable to the county. The same applies to persons who use and damage

roads during times when use is restricted. If the operator is not the owner of the vehicle, the owner and operator are jointly and severally liable. This means that either person is liable for the entire damages, with the county attorney responsible for collecting the damages.

The statutes regarding county roads are comprehensive. Persons who purchase rural acreage and rely on the county roads for access should be aware of the statutes so that they understand their rights and responsibilities.

The Letter of the Law is published quarterly by the Real Estate Center to provide timely legal information that may affect the practice of real estate.

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