
MEMORANDUM

TO: THE WOODLANDS TOWNSHIP BOARD OF DIRECTORS AND OTHER INTERESTED PARTIES

FROM: WILLIAM R. BUCK

SUBJECT: COUNTY AUTHORITY OVER ROADS WITHIN COUNTY

DATE: 08/15/2019

Question Presented: Does incorporation preclude actions relating to roads by Harris or Montgomery County within the incorporated entity's boundaries without the consent of the incorporated entity?

Conclusion: Given the existence of the Harris County and the Montgomery County Road Laws, one can reasonably conclude that incorporation alone will not preclude action on roads by either County with respect to their respective jurisdictions even if approval of the incorporated entity is not obtained and/or is expressly withheld.

Discussion: The general rule in Texas is very clear: an incorporated entity has exclusive control and power over the streets, alleys, and public roads and highways within its boundaries.¹ However, while the general rule is clear, it is not absolute. The broad authority granted to incorporated entities by the Texas Transportation Code is explicitly subject to "...the authority of a county provided by a local road law."² The legislative authority to create such an exception to the general rule is drawn directly from the Texas State Constitution, Article VIII, Section 9.³

¹ Texas Transportation Code, Sec. 251.012(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. (emphasis added)

² Texas Transportation Code Sec. 251.012(e): The authority granted by this section is in addition to the authority of a county provided by a local road law.

³ Texas Constitution Article VIII, Section 9(e): The Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws.

The legislature enacted what has become known as the “Harris County Road Law” in 1913⁴. The law was recognized as valid by the Court of Civil Appeals in *Hughes v. County Commissioners’ Court of Harris County* in 1931⁵. Moreover, the Office of Vince Ryan, Harris County Attorney, has recently confirmed that the Harris County Road Law, while amended over the years, remains in effect (see attached opinion, which includes a copy of the Law in its current form).

The Harris County Road Law creates authority in the County to act within an incorporated area without obtaining approval of the entity’s governing body. Specifically, Section 1 of the law provides:

“...the commissioners court of Harris County shall have control of all roads, bridges and all works and constructions incident to its roads, bridges and drainage, that have heretofore been laid out or constructed, or that may hereafter be laid out or constructed by Harris County or under its direction.”

The breadth of the County’s authority was directly addressed in the case *City of Piney Point Village v. Harris County*⁶ wherein the court held, “The effect ...is to give the Country authority to lay out and control county roads within incorporated cities or towns if they connect with main roads leading into the City of Houston.”

The Texas legislature had previously enacted a similar Montgomery County Road Law: Acts 1901, 27th Leg., Ch. 45, Section 2, 76. Under the Montgomery County Road Law,

“The commissioners court of said county shall have the full power and authority, and it shall be its duty to adopt such system for working, laying out, draining out and repairing the public roads in said county as it may deem best, and from time to time said court may change its plan or system of working.”

As in the case of the Harris County Road Law, approval of the incorporated entity’s governing body is not required prior to the exercise of this authority by Montgomery County. The Montgomery County Attorney’s office has likewise advised that, “The statute itself, as we understand, has not been repealed.” (See attached opinion and copy of the Montgomery County Road Law.) It does not appear that the Montgomery County statute has been subject to litigation, although there is no reason to believe that the reasoning and holdings in *Hughes v. County Commissioners’ Court of Harris County* and *City of Piney Point Village v Harris County* would not apply.

Several other points should be noted. First, the Harris County Road Law specifically provides that “road” is broadly defined to include, “...every part of every road, whether inside or outside of any

⁴ Harris County Road Law: Local and Special Laws of Texas, Acts of the 33rd Legislature, Ch. 17, P. 64 et seq.

⁵*Hughes v. County Commissioners’ Court of Harris County*, 35 S.W.2nd 818 (Tex.Civ.App. – Houston 1st Dist. 1931, *no writ*)

⁶ *City of Piney Point Village v Harris County*, 479 S.W.2nd 358 (Tex.Civ.App. – Houston 1st Dist. 1972, *writ ref’d n.r.e*)

incorporated city or town in Harris County, or not.”⁷ Although a comparable provision does not exist in the Montgomery County Road Law, the broad grant of authority found in Section 2 of that law would seem to be adequate to provide authority to the County even without such a specific grant. Second, both Road Laws granted the respective Counties powers of eminent domain necessary to implement the Laws.⁸ Lastly, both Road Laws specifically provide that in the event of a conflict with the General Law, the specific County law will prevail.⁹ The Court in *City of Piney Point Village v Harris County* confirmed this construction in connection with the Harris County Road Law.

⁷ Harris County Road Law, Section 29

⁸ The Road Laws originally referenced railroad eminent domain procedures (Section 12 in each). Those procedures were repealed in 1947, but the repealing act provided eminent domain proceedings should be governed by the general statutes authorizing counties to maintain such proceedings. Article 3264a, V.A.T.S., authorizes counties to condemn property for road purposes. This was found adequate to support the right of eminent domain by Harris County in *City of Piney Point Village v Harris County*.

⁹ Harris County Road Law – Section 33. Montgomery County Road Law – Section 19.
