

2025

ROAD & BRIDGE HANDBOOK

TEXAS ASSOCIATION OF COUNTIES

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TEXAS ASSOCIATION *of* COUNTIES

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Table of Contents

I.	Introduction	2
II.	County Road Systems	2
III.	Opening and Closing Roads.....	6
IV.	County Road Names.....	8
V.	County Road Engineers	9
VI.	Right-of-Way.....	11
VII.	Right-of-Way Maintenance	12
VIII.	Roads Within a Municipality	18
IX.	Traffic Control.....	19
X.	Fees and Fines.....	22
XI.	Regulation of Overweight and Oversize Vehicles.....	23
XII.	Drainage, Culverts, and Cattle Guards.....	27
XIII.	Procurement and Donations	30
XIV.	Bridges	33

COMMON ROAD AND BRIDGE QUESTIONS

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The  symbol indicates sections that have been updated since the previous publication.

I. INTRODUCTION

The purpose of this publication is to provide a summary of common questions that arise under the Transportation Code and other statutes that address the county's authority over roads and bridges. This publication does not cover every road and bridge law in Texas. This publication is not an all-inclusive reference.

II. COUNTY ROAD SYSTEMS

1. What types of systems are authorized for the administration of county roads and how are they implemented?

Chapter 252 of the Transportation Code authorizes four types of optional systems of county road administration: an ex officio road commissioner system; a road commissioner system; a road superintendent system; and a county road department system. Each system has its own characteristics.

Ex Officio Road Commissioner System¹

In an ex officio road commissioner system, also commonly known as a precinct-based system, a county commissioner is the ex officio road commissioner of the commissioner's precinct.² A commissioners court must adopt the system by an order

¹ Texas Transportation Code, Chapter 252, Subchapter A)

² Tex. Transp. Code §252.003

made at a regular meeting of the court when all members are present.³ Section 252.006 of the Transportation Code sets forth the power and duties of ex officio road commissioners. For example, under rules adopted by the commissioners court, an ex officio road commissioner directs: laying out of new roads; the construction or changing of roads; and the building of bridges.⁴ Subject to authorization by the commissioners court, an ex officio road commissioner may also employ persons for positions in the commissioner's precinct to be paid from the county road and bridge fund.⁵

Road Commissioner System⁶

Under a road commissioner system, a commissioners court may employ not more than four road commissioners.⁷ Certain counties are also prohibited by statute from adopting this type of system.⁸ Section 252.105 of the Transportation Code outlines the duties of road commissioners, including ensuring that the roads and bridges in the commissioner's district are kept in good repair. A road commissioner's acts are subject to the control, supervision, and approval of the commissioners court, and a road commissioner must provide regular reports to the commissioners court.⁹ Additionally, a commissioners court may not employ a member of the court as a road commissioner.¹⁰

Road Superintendent System¹¹

In a road superintendent system, a commissioners court appoints a road superintendent for the county or one superintendent in each commissioner's precinct by an order made at a regular meeting of the court.¹² Certain counties are prohibited

³ Tex. Transp. Code §252.001

⁴ Tex. Transp. Code §252.006

⁵ Tex. Transp. Code §252.006

⁶ Texas Transportation Code, Chapter 252, Subchapter B

⁷ Tex. Transp. Code §252.103

⁸ Tex. Transp. Code §252.101. As of publication, the counties prohibited from adopting the road commissioner system are: Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood County.

⁹ Tex. Transp. Code §§252.106, 252.107

¹⁰ *Starr County v. Guerra*, 297 S.W.2d 379 (Tex. Civ. App.—San Antonio 1956, no writ)

¹¹ Texas Transportation Code, Chapter 252, Subchapter C

¹² Tex. Transp. Code §252.203

by statute from adopting a road superintendent system.¹³ A road superintendent must be a qualified voter of the county or precinct for which the road superintendent is appointed, and holds a two-year term, unless removed by the commissioners court for good cause.¹⁴ Section 252.205 of the Transportation Code sets forth the duties of the road superintendent, while Section 252.208 of the Transportation Code provides that work performed under a road superintendent is subject to the general supervision of the commissioners court.

Road Department System¹⁵

A county may only adopt a road department system, often referred to as a unit system, through an election. The commissioners court must submit the question as to whether to adopt such a system to the voters if it receives a petition signed by the number of registered voters equal to at least 10 percent of the total votes received in the county by all gubernatorial candidates in the most recent election.¹⁶ A county road department system may only be discontinued in the same manner as it is adopted – by petition and subsequent election.¹⁷

Under a road department system, the commissioners court appoints a county road engineer who must be a licensed professional engineer experienced in road construction and maintenance; if the commissioners court is unable to employ a licensed professional engineer, it may appoint a county road administrator with certain experience to perform the duties of the engineer.¹⁸ See page nine for discussion of county road engineers.

The county road department is responsible for the construction and maintenance of county roads and includes the commissioners court as the policy-making body and the county road engineer or administrator is appointed for an indefinite term, but may be removed by majority vote of the commissioners court.¹⁹ Section 252.309 of the

¹³ Tex. Transp. Code §252.201. At time of publication, the counties prohibited from adopting the road superintendent system are: Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood County.

¹⁴ Tex. Transp. Code §252.203

¹⁵ Texas Transportation Code, Chapter 252, Subchapter D)

¹⁶ Tex. Transp. Code §252.301

¹⁷ Tex. Transp. Code §252.301(d)

¹⁸ Tex. Transp. Code §252.304

¹⁹ Tex. Transp. Code §252.307

Transportation Code outlines the duties of the county road engineer or road administrator, including supervising the administration of the county road department.

2. Our county adopted a road map several years ago pursuant to state law. What is the effect of adopting that road map?

In 2003, the Texas Legislature added Chapter 258 to the Transportation Code, which authorized counties to clarify the existence of a public interest in a road by preparing and adopting a county road map. However, the county must have initiated or completed compliance with the law before September 1, 2011, for it to apply.

Adoption of the county road map provided those counties with populations of 50,000 or less with a method to establish a claim to continuously maintained roads. Pursuant to Chapter 281 of the Transportation Code, effective August 31, 1981, counties with populations of 50,000 or less can only acquire a public interest in a private road by purchase, condemnation, written dedication, or a court's final judgment of adverse possession.²⁰ For those counties that adopted road maps, the map could include each road in which the county claimed a public interest under Chapter 281 or other law, or as a result of having continuously maintained the road with public funds before September 1, 1981.²¹

Counties adopting the map had to comply with procedures specified in Chapter 258, including a public meeting that allowed for persons to protest the county's claim to a public interest in a road included in the map.²² Ultimately, the adoption of the road map serves as conclusive evidence of: the public's right of access over a road included on the map; and the county's authority to spend public money to maintain a road included on the map.²³ Chapter 258 also afforded a person asserting a private interest in a road included on the map to contest the inclusion of the road by filing a suit in district court within two years of the map's adoption.²⁴

²⁰ Tex. Transp. Code §§281.002, 281.003

²¹ Tex. Transp. Code §258.002

²² Tex. Transp. Code §258.002

²³ Tex. Transp. Code §258.003

²⁴ Tex. Transp. Code §258.004

3. Is there a classification system for county roads?

Each public road in the county must be classified as a first-class, second-class, or third-class road based on the width of the road.²⁵ However, many counties do not have a formal classification system. Section 251.007 of the Transportation Code sets forth the various widths of each of the respective classifications and prohibits a county from reducing a first or second-class road to a lower class. A county road's classification is significant largely because a landowner may only erect a gate across a third-class road subject to commissioners court approval.²⁶

4. Does approval of a plat constitute an acceptance of a dedication of roads?

No. Dedication is a mere offer and a commissioners court's approval of a subdivision plat that contains a dedication does not constitute an acceptance of a dedication of roads depicted on the plat.²⁷ A commissioners court's approval of a plat allows it to be filed in the county records, but it does not convert private roads represented on the plat into county roads or impose a duty on the county to maintain them.²⁸ A commissioners court must formally accept the roads into the county road system as a separate action.

III. OPENING AND CLOSING ROADS

1. May a commissioners court open a new road on its own motion, or is a landowner petition required?

A commissioners court may open a new road on its own motion or upon application by members of the public.²⁹ Tex. Transp. Code §251.051 provides general authority for a commissioners court to lay out and open new roads, and Tex. Transp. Code §251.052 authorizes the commissioners court to open a new road on petition by eight landowners in a precinct and sets out what information must be included in the petition.

²⁵ Tex. Transp. Code §251.007

²⁶ Tex. Transp. Code §251.010

²⁷ *Langford v. Kraft*, 498 S.W.2d 42 (Tex. Civ. App.—Beaumont 1973); Tex. Att'y Gen. Op. No. GA-0594 (2008)

²⁸ Tex. Att'y Gen. Op. No. GA-0594 (2008)

²⁹ Whether a commissioners court had authority to open a new road on its own motion or only upon application by private citizens was settled by the Texas Supreme Court in *Robison et al. v. Whaley Farm Corporation*, 120 Tex. 633 (1931). See also, *Parkey v. Archer County*, 61 S.W.2d at 179 (Tex. App. – Fort Worth, 1933, reh'g denied).

2. Is a unanimous vote of the commissioners court required to open a new road?

No. A unanimous vote of the commissioners court is required to close, abandon, or vacate a public road, or alter a public road, except to shorten it from end to end. A unanimous vote is not required to open or discontinue a road.³⁰

3. Which roads may a commissioners court discontinue, close or abandon?

A commissioners court may not discontinue, close, or abandon an entire first-class or second-class road unless the road has been vacated or unused for at least three years.³¹ A commissioners court may abandon a public road that has not been accepted into the county's road maintenance system.³² There is no "wait-period" to discontinue, close, or abandon a third-class road or a portion or portions of a first-class or second-class road under the Transportation Code.

A commissioners court may not discontinue, close or abandon a road to a cemetery, unless (1) the road is a cemetery road and the landowner whose property adjoins the road has not filed notice with the county clerk that the landowner will provide access to the cemetery as provided in Section 711.041, Health & Safety Code; or (2) the fenced road is necessary to reach adjoining property.

4. If a commissioners court closes, abandons, discontinues or vacates a road, must an alternate route be provided?

It depends. "Discontinuing" a road means to cease maintaining the road.³³ A commissioners court may not discontinue a road before a new road designated by the court is ready to replace it.³⁴

There is no statutory requirement to provide a new, alternate route when a commissioners court closes, abandons, or vacates a road. *See Tex. Att'y Gen. Op. No. GA-0088 (2003)*, discussing, in theory, the commissioners court's ability to close, abandon, or vacate a road without providing an alternate route.

³⁰ Tex. Transp. Code §251.051

³¹ Tex. Transp. Code §251.051(d)

³² Tex. Att'y Gen. Op. No. KP-0436 (2023)

³³ Tex. Transp. Code §251.001(2)

³⁴ Tex. Transp. Code §251.051(c)

5. Can the commissioners court close, abandon, or vacate a road over the objection of abutting landowners?

No. An abutting landowner acquires a property interest in the use and access to an abutting roadway. A commissioners court may not close the road over the abutting landowners' objection, but it may discontinue maintenance and supervision of the road.³⁵ ³⁶

6. If the commissioners court closes, abandons, or vacates a public road at the request of an abutting landowner, may the court require anything of the requesting landowners?

Yes. The court may require the owner to pay all reasonable administrative costs incurred in processing the request and recording the order in the deed records and to reimburse the county for the market value of any property interest conveyed to the landowner. The commissioners court may adopt standard fees required to be paid for processing a request and recording an order.³⁷

IV. COUNTY ROAD NAMES

1. What is the process for naming county roads?

The commissioners court by order may adopt uniform standards for naming public roads located in unincorporated areas of the county and for assigning address numbers to property located in unincorporated areas of the county.³⁸ The commissioners court by order may also adopt a name for a public road located in an unincorporated area of the county and may assign address numbers to property located in an unincorporated area of the county for which there is no established address system.³⁹

Additionally, the commissioners court may adopt standards and specifications for the design and installation of address number signs to identify properties located in unincorporated areas of the county; require the owners or occupants of properties in

³⁵ Tex. Transp. Code §251.058

³⁶ See also, *Smith County v. Thornton*, 726 S.W.2d 2 (Tex. 1986) (citing cases)

³⁷ Tex. Transp. Code §251.058(e)

³⁸ Tex. Transp. Code §251.013(a)

³⁹ Tex. Transp. Code §251.013(b)

those areas to obtain address number signs that comply with the adopted standards; and install and maintain those signs at the locations and in the manner required by those standards.⁴⁰

Orders may be adopted only after conducting a public hearing, with notice provided at least two weeks prior to the hearing; the failure to comply with an order is a Class C misdemeanor.⁴¹

2. May a commissioners court change the name of a county road once a name has been established?

The Attorney General has opined that the authority of a commissioners court to name public roads under Section 251.013 of the Transportation Code includes the authority to rename a public road.⁴² A commissioners court may act under Section 251.013(a) of the Transportation Code by adopting uniform standards for naming county roads and applying them to change the name of a road, or the commissioners court may exercise its authority under Section 251.013(b) to adopt a new name for the road. In either case, the court may act only by adopting an order after conducting a public hearing. The action of renaming a county road is subject to judicial review for abuse of discretion.

V. COUNTY ROAD ENGINEERS

1. What is a county road engineer and when is one required?

In a county that has adopted the county road department system, the commissioners court is required to appoint a county road engineer.⁴³ The road engineer is designated as the chief executive officer for the county road department and must be (1) a licensed professional engineer experienced in road construction and maintenance and (2) meet the qualifications required by the Texas Department of Transportation for its district engineers.⁴⁴

⁴⁰ Tex. Transp. Code §251.013(b-1)

⁴¹ Tex. Transp. Code §§251.013(d), 251.013(e)

⁴² Tex. Att'y Gen. Op. No. JC-0301 (2000)

⁴³ Tex. Transp. Code §252.304

⁴⁴ Tex. Transp. Code §252.304(a). But also see Tex. Transp. Code §252.304(b) discussed in paragraph 5 of this section.

2. Are there oath and bond requirements for a county road engineer?

Yes. The county road engineer is required to take the constitutional oath of office and to give a bond in an amount and with a surety as approved by the commissioners court. The county is required to pay the premiums on the bond.⁴⁵

3. How is the salary of the county road engineer paid?

The county road engineer's annual salary is paid in equal monthly installments out of the county road and bridge fund.⁴⁶

4. How long is the county road engineer's term? What is the removal process?

The county road engineer serves an indefinite term.⁴⁷ The road engineer may be removed by a majority vote of the commissioners court.⁴⁸ The court is required to hold a public hearing before the removal can take effect if the county road engineer requests in writing that one be held. If the road engineer is removed, the removal takes effect on the 30th day after the date the road engineer receives written notice of the commissioners court's intention to remove them.⁴⁹

5. What if no qualified road engineer is available?

The commissioners court is permitted to employ a county road administrator to perform the road engineer duties if the court is unable to employ a licensed professional engineer.⁵⁰ The Attorney General has opined that the commissioners court has discretion to determine when it is unable to employ a licensed engineer.⁵¹ The county road administrator must have had experience in road building or maintenance or other types of construction work qualifying the person to perform the duties of the position but doesn't have to have had any particular amount of professional training or experience in engineering work.⁵²

⁴⁵ Tex. Transp. Code §252.305

⁴⁶ Tex. Transp. Code §252.306

⁴⁷ Tex. Transp. Code §252.307(a)

⁴⁸ Tex. Transp. Code §252.307(b)

⁴⁹ Tex. Transp. Code §252.307(b)

⁵⁰ Tex. Transp. Code §252.304(B)

⁵¹ Tex. Att'y Gen. Op. No. GA-0473 (2006)

⁵² Tex. Transp. Code §252.304(b)



VI. RIGHT-OF-WAY

1. Does a county control whether or not a water district or other political subdivision may place water or sewer lines along or under a county road?

All districts or water supply corporations are given rights-of-way within, along, under, and across all county roads without the requirement for surety bonds or security.⁵³ The county may require indemnification. A water corporation or municipality is authorized to lay water system pipes, mains, conductors, or other fixtures through, under, along, across, or over a public road, a public street, or a public waterway not in a municipality in a manner that does not inconvenience the public using the road, street or waterway.⁵⁴ The water corporation or municipality proposing to build a water line along the right-of-way of a county road not in a municipality shall give notice of the proposal to the commissioners court.⁵⁵ On receipt of the notice, the commissioners court may designate the location in the right-of-way where the water line may be constructed.⁵⁶

A commissioners court is authorized to require a water corporation or municipality to relocate its water line at the corporation or municipality's own expense to allow the widening or other changing of a traffic lane.⁵⁷ The commissioners court must give the water corporation or municipality 30-day written notice of the requirement and the notice must identify the water line to be relocated and indicate the location on the new right-of-way where the line may be placed.

2. How wide is the county's easement or right-of-way?

While Section 251.007 of the Texas Transportation Code lists the minimum and maximum widths for first and second-class roads and the minimum width for third-class roads, there is no statute that defines the width of an easement. The width of an easement will depend on what was dedicated, condemned, purchased, or acquired by prescription. Reference to maps, plats, deeds, surveys, or commissioners court minutes may indicate the width of an easement. Prior to taking certain actions, it may be advisable to research the title to the land in question to determine legal width.

⁵³ Tex. Water Code §49.220

⁵⁴ Tex. Local Gov't Code §552.104(a)

⁵⁵ Tex. Local Gov't Code §552.104(b)

⁵⁶ Tex. Local Gov't Code §552.104(c)

⁵⁷ Tex. Local Gov't Code §552.105

3. May a school district access and use a county's right-of-way to install fiber optic cable?

The Attorney General has opined that, in the absence of express statutory authority for a school district to lay fiber optic cables along county roads, they may not.⁵⁸

VII. RIGHT-OF-WAY MAINTENANCE

1. Is there a minimum amount of maintenance that must be performed on a county road or right-of-way?

No. There is no express requirement to maintain a county road or right-of-way other than the requirement that the rights-of-way be kept free of obstructions.⁵⁹ However, if a county road becomes so degraded that its condition poses a "special defect" and the county knows about it, the county could be liable for personal injuries or death resulting from the condition of the road. A discussion of what constitutes a "special defect" is beyond the scope of this publication.

A Sheriff's office or fire department may remove personal property from a roadway or right-of-way if they determine that the property blocks the roadway or endangers public safety.⁶⁰ The commissioners court of a county that has a fire department should develop a policy for consulting with law enforcement agencies to remove personal property from a roadway or right-of-way.⁶¹ The definition of personal property includes an unattended manufactured home.⁶²

2. May the commissioners court simply divide the funds allocated for road and bridge work for the year equally among the county's precincts?

No. While the commissioners court has broad discretion about how and when to maintain the county roads and how to budget for road maintenance expenditures,⁶³

⁵⁸ Tex. Att'y Gen. Op. No. GA-0793 (2010)

⁵⁹ Tex. Transp. Code §251.008

⁶⁰ Tex. Transp. Code §545.3051

⁶¹ Tex. Transp. Code §545.3051(f)

⁶² Tex. Transp. Code §545.3051(a)(3)(E)

⁶³ Tex. Transp. Code §251.016 states, "The commissioners court of a county may exercise general control over all roads, highways, and bridges in the county." Tex. Transp. Code §251.003 states, "The commissioners court of a county may make and enforce all necessary rules and orders for the construction and maintenance of public roads."

an appeals court has ruled that a commissioners court's order distributing road and bridge funds equally among the county's four precincts without considering the condition of roads, traffic, or the amount of taxes collected in each precinct for road and bridge purposes was an abuse of discretion.⁶⁴

3. May the commissioners court remove or order the removal of fencing that poses a hazard to public users of the road?

Yes, subject to judicial review. Tex. Transp. Code §251.008(1) requires public roads of all classes to be free of all obstructions, and Tex. Transp. Code §251.003(a)(1) authorizes the commissioners court to make and enforce all necessary rules and orders for the construction and maintenance of public roads. Based on the authority provided in the Transportation Code, the Texas Attorney General's Office opined that a commissioners court may remove or order the removal of fencing that creates a safety hazard to the public users of the road.⁶⁵

4. May the commissioners court remove or order the removal of trees and shrubs that pose a hazard to the public's use of the county's right-of-way?

Yes, subject to judicial review. Tex. Transp. Code §251.008(1) requires public roads of all classes to be free of all obstructions, and Tex. Transp. Code §251.003(a)(1) authorizes the commissioners court to make and enforce all necessary rules and orders for the construction and maintenance of public roads. Based on the authority provided in the Transportation Code, the Texas Attorney General's Office opined that a commissioners court may remove or order the removal of trees and shrubs in the right of way that create a safety hazard to the public users of the road.⁶⁶

5. May the commissioners court sell or otherwise dispose of trees, shrubs, or timber cut down or removed from the right-of-way?

Yes, subject to judicial review. Tex. Transp. Code §251.008(1) requires public roads of all classes to be free of all obstructions, and Tex. Transp. Code §251.003(a)(1) authorizes the commissioners court to make and enforce all necessary rules and orders for the construction and maintenance of public roads. Based on the authority provided in the Transportation Code, the Texas Attorney General's Office opined that

⁶⁴ *Garland et al. v. Sanders et al.*, 114 S.W.2d 302 (Civ.App—Dallas, 1938)

⁶⁵ See Tex. Att'y Gen. Op. No. GA-0703 (2009)

⁶⁶ See Tex. Att'y Gen. Op. No. JM-1241 (1990)

a commissioners court may sell or otherwise dispose of trees, shrubs, or timber growing in the public's right-of-way.⁶⁷

6. May the commissioners court order a private landowner to allow the county to enter upon private land to cut or trim trees or shrubs interfering with the public right-of-way?

No. There is no statutory authority for the commissioners court to demand access to private land in order to maintain the public's right of way. However, the commissioners court may seek the landowner's consent to enter private property. It is advised that the landowner's consent be in writing and accompanied by a written waiver of liability and release of claims.

7. May a landowner put a fence across a third-class road?

Yes, conditioned on the following: Texas Transp. Code §251.010 authorizes a person, including a neighborhood association, who owns or controls real property on which a third-class road or a neighborhood road (see Question 10 below) is located for which the right-of-way was obtained without cost to the county to erect a gate across the road "when necessary" and with commissioners court approval. The Attorney General has opined that a landowner must remove a gate across a third-class road if the commissioners court has constructed a cattle guard to replace it.⁶⁸

8. May a commissioners court accept private donations for road maintenance and repair?

Yes. Counties are statutorily authorized to accept donations for the purpose of road maintenance and repairs. Counties operating under the road commissioner or superintendent systems may accept donations of labor, money, or other property to aid in building or maintaining county roads under Tex. Transp. Code §§252.109 and 252.214. Under §81.032 of the Local Government Code, counties operating under the ex officio road system may accept gifts, grants or donations for the purpose of performing a function conferred by law on the county – in this case, road construction and maintenance. There is no specific statute authorizing counties under the unit system to accept donations for road maintenance and repair, but donations for road maintenance and repair in a unit system county can be accepted under the general grant of authority in §81.032 of the Local Government Code.

⁶⁷ See Tex. Att'y Gen. Op. No. JM-1241 (1990)

⁶⁸ Tex. Att'y Gen. Op. No. LO-98-120 (1998)

9. May a county perform maintenance work on private property?

Generally, a county may not repair or maintain a private road or property and may not use county labor, materials, or equipment for a purpose other than public use.⁶⁹

However, there are a few exceptions:

Counties with a population under 7,500

A constitutional amendment authorizes counties with a population of 7,500 or less to construct or repair private roads if the county charges a reasonable amount for the work. Revenue received from private road work may be used only for the construction, including right-of-way acquisition, or maintenance of public roads.⁷⁰

Neighborhood Roads

Chapter 253 of the Transportation Code authorizes a procedure for improving private subdivision roads “to comply with county standards for roads” where the condition of the roads impacts the public’s health, safety or welfare. If the commissioners court determines that improvement of a road in a subdivision or of an access road to a subdivision is necessary for the public health, safety, or welfare of the residents of the county, the commissioners court may propose to (1) improve the road to comply with county standards for roads; and (2) assess all or part of the costs of the improvement pro rata against the record owners of the property.⁷¹

The commissioners court must publish notice of the proposed improvement and assessment at least twice in a newspaper of general circulation in the county, and the notice must state the date the commissioners court will hold a public hearing to consider the proposed improvement and assessment.⁷² The commissioners court must hold a public hearing on the proposed improvement and assessment on or after the 31st day after the first required notice is published.⁷³ Within 10 days of the public hearing, the commissioners court must send a ballot and an addressed stamped envelope via certified mail to each record owner of real property in the subdivision or part of the subdivision to be assessed.⁷⁴ The ballot must state the maximum assessment that could be made against each property.

⁶⁹ *Godley v. Duval*, 361 S.W.2d 629 (Tex. Civ. App.—San Antonio 1962); Tex. Att'y Gen. Op. No. JM-0200 (1984)

⁷⁰ Tex. Const. Art. III, section 52f

⁷¹ Tex. Transp. Code §253.003

⁷² Tex. Transp. Code §253.004

⁷³ Tex. Transp. Code §253.005

⁷⁴ Tex. Transp. Code §253.006

Not later than the 30th day after the date of the public hearing, the county clerk shall tally the returned ballots and declare the results to the commissioners court. If a majority of ballots are in favor of the improvement and assessment, the commissioners court shall order the improvements and assess the costs of the improvements against the real property owners of the subdivision.⁷⁵

A private subdivision road improved under Chapter 253 becomes a county road.⁷⁶

Completion or Repair of Subdivision Roads Not Accepted into Road System

Chapter 232 of the Local Government Code authorizes counties to regulate subdivisions and specifically authorizes counties to establish minimum standards for the construction of subdivision streets and roads and associated drainage features.⁷⁷ A county may require a construction bond as security to the county that the developer will comply with the county's subdivision rules and to facilitate completion or repair of subdivision roads and drainage facilities should the developer fail to honor its obligations.⁷⁸

Chapter 232 does not state how bond funds may be spent. The Texas Attorney General opined that a county has implied authority under Chapter 232 of the Local Government Code to use subdivision bond funds to complete or repair public or private subdivision roads and drainage features.⁷⁹ A county's expenditure of such funds to complete or repair a subdivision road to ensure conformity with standards adopted for subdivision roads, without more, does not constitute acceptance of the roads into the county's system of roads or obligate the county to further maintain the roads.⁸⁰

Driveways and Culverts

There is limited authority to clear drainage ditches and culverts on private property in counties with a population of 100,000 or less that have established a drainage system under Chapter 254 of the Transportation Code. The private ditch or culvert must connect with a drainage ditch constructed or maintained by the county. Before removing blockage in a private ditch, the commissioners court must provide 20 days'

⁷⁵ Tex. Transp. Code §253.007

⁷⁶ Tex. Transp. Code §253.011

⁷⁷ Tex. Local Gov't Code §232.003

⁷⁸ Tex. Local Gov't Code §§232.003(7), 232.004

⁷⁹ Tex. Att'y Gen. Op. No. KP-0256 (2019)

⁸⁰ Tex. Att'y Gen. Op. No. KP-0256 (2019)

notice by certified mail to the record owners of the property that they are in violation of an order adopted under Chapter 254 of the Transportation Code.⁸¹

10. May a county maintain a private road used as a school bus route?

 The Attorney General has opined that in the absence of constitutional authorization, a commissioners court does not have the legal authority to maintain or improve a private road, even though it is used as a school bus route; prescriptive easements in private roads are not necessarily acquired when school buses use them to pick up school children.⁸²

11. Can a county require a permit and fee for installing an access point to a county road?

Yes. The commissioners court, under its general authority to make and enforce all necessary rules and orders for the construction and maintenance of public roads and to exercise general control over the roads, may require a permit for the construction of an access point to a county road. Under the specific authority in Tex. Transp. Code §251.017, the commissioners court may set a reasonable fee related to the impact the access points will have on county roads.⁸³

12. May the commissioners court charge a fee for cutting a road for cable installation, utilities, or other purposes?

To provide funds for the future inspection, repair, and maintenance of a cut road, a county may impose a fee for each cut of a county road during or as an incident to the installation, maintenance, or repair of any facilities or properties of the person or entity.⁸⁴ The fee may not exceed \$500, may be imposed either before or after the cutting of the road; and is in addition to any other charge the county is authorized to impose to repair damage to the road because of the cut.

This fee does not apply in relation to a person or other entity that has entered into an agreement with the county that provides for fees to be paid by the person or entity for the use of the county roads; or is a utility that is not required under Chapter 181, Utilities Code, to provide notice to a commissioners court of a county.

⁸¹ Tex. Transp. Code §254.008

⁸² Tex. Att'y Gen. Op. No. DM-0013 (1991)

⁸³ Tex. Att'y Gen. Op. No. GA-1013 (2013)

⁸⁴ Loc. Gov't Code §240.907

A county may impose the §240.907 fee for the activities of excavating or cutting the surface of a county road, but not for activities that bore or tunnel under a county road without cutting the road surface.⁸⁵

13. Can a county deny the installation of public utilities in the right-of-way?

The county has no authority to deny the excavation of the right-of-way for installation of a public utility. However, the county can designate the location of the placement of some public utility lines within the right-of-way.⁸⁶ Additionally, the Texas Attorney General opined that Ch. 181 of the Texas Utilities Code does not authorize a county to impose permitting or minimum-depth requirements on a telephone or telegraph corporation that buries cable in a county road right-of-way.⁸⁷

VIII. ROADS WITHIN A MUNICIPALITY

1. May a county construct, improve, or maintain a street within a municipality?

With the approval of the governing body of a municipality, the commissioners court may spend county funds to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located in the municipality, including any construction, improvement, maintenance, or repair allowed under Section 791.032 of the Government Code, if the commissioners court finds that the county will receive benefits as a result of the work on the street or alley.⁸⁸ Section 791.032 of the Government Code authorizes interlocal agreements with a municipality to finance the construction, improvement, maintenance, or repair of streets or alleys in the municipality, including portions of the municipality's streets or alleys that are not an integral part of or a connecting link to other roads or highways.

While prior Attorney General Opinions held that a county's authority to maintain city streets was limited to those streets forming an integral part or a connecting link of the county road system, the rule has since changed and that is generally no longer a requirement; the maintenance of city streets must, however, serve a county purpose.⁸⁹

⁸⁵ Tex. Att'y Gen. Op. No. GA-0722 (2009)

⁸⁶ See Tex. Utilities Code §§181.024, 181.044

⁸⁷ Tex. Att'y Gen. Op. No. KP-0499 (2025)

⁸⁸ Tex. Transp. Code §251.012

⁸⁹ Tex. Att'y Gen. Op. No. JC-0036 (1999)

2. Are there any special approval procedures for counties when entering into an interlocal agreement relating to constructing, improving, or repairing a road?

Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal agreement authorized by Chapter 791 of the Government Code, a commissioners court must give specific written approval for the project in a document other than the interlocal contract; the approval must describe the project to be undertaken and identify the project's location.⁹⁰ A county is liable to another local government for the amount paid by the local government for such a project requiring approval if the county begins the project without the approval and the local government makes the payment before the project is begun.⁹¹

3. Can a county spend bond funds to construct, improve, or maintain city streets?

Yes, but only if certain requirements are met. The statutes⁹² authorizing the use of county funds to finance the construction and maintenance of city streets do not overcome the constitutional requirements imposed on the use of funds from road bonds under Article III, Section 52(b) and (c) of the Texas Constitution.⁹³ County bond proceeds under these constitutional provisions may be used to construct, repair, improve, or maintain city streets *if the city consents and the streets are an integral part of or a connecting link with a county road or state highway system.*⁹⁴

IX. TRAFFIC CONTROL

1. May a commissioners court limit truck traffic on a county road?

In an older opinion, the Attorney General opined that a commissioners court could forbid all truck traffic on a county road by posting a "No Thru Truck Traffic" on a road.⁹⁵ A county should review with the county attorney any limitations to traffic on county roads.

⁹⁰ Tex. Gov't Code §791.014

⁹¹ *Id.*

⁹² Tex. Transp. Code §251.012; Tex. Gov't Code §791.032

⁹³ Tex. Att'y Gen. Op. Nos. KP-0311 (2020), GA-0576 (2007), JC-0036 (1999)

⁹⁴ Tex. Att'y Gen. Op. No. KP-0311 (2020)

⁹⁵ Tex. Att'y Gen. Op. No. GA-0088 (2003). Road supervisors, defined as a person with authority to supervise roads in a county, district or precinct of the county, appear to have a more limited authority set out in Tex. Transp. Code §251.157 to prohibit or restrict the use of a road by vehicles that may unduly damage the road because of wet weather or recent construction or if a bridge or culvert is unsafe. The

2. May the commissioners court set speed limits on county roads?

The commissioners court of a county, by order entered on the minutes of the court, may determine and set a maximum reasonable and prudent speed for a vehicle travelling on any segment of a county road. In determining the maximum reasonable and prudent speed, the commissioners court shall consider all circumstances on the affected segment of the road, including the width and condition of the road surface and the usual traffic on the road.

A speed limit set by the commissioners court is effective when appropriate signs giving notice of the speed limit are installed on the affected segment of the county road.⁹⁶

3. May the commissioners court adjust the speed limit on a county road?

The commissioners court may modify a speed limit by an order entered on its records.

The commissioners court has authority to **increase speed limits** based on the results of an engineering and traffic investigation.⁹⁷ The commissioners court may not establish a speed limit of more than 70 miles per hour.⁹⁸

The commissioners court of a county may declare a **lower speed limit** of not less than 30 miles per hour on a county road or highway if the commissioners court determines that the speed limit is unreasonable or unsafe, or 20 miles per hour in a residence district, unless the roadway has been designated as a major thoroughfare by a city planning commission. An engineering and traffic investigation is not required if a commissioners court is lowering a speed limit to 30 miles per hour on a county road or highway or 20 miles per hour on a county road within a residential district.⁹⁹

The commissioners court of a county with a population of more than 2.8 million may establish, based on the results of an engineering and traffic investigation, a speed limit of not more than 75 miles per hour on any part of a highway of that county that is a limited-access or controlled-access highway, regardless of the location of the part of the highway.¹⁰⁰

road supervisor is required to post notices and cannot restrict access to the road until an alternative route has been provided.

⁹⁶ Tex. Transp. Code §251.154

⁹⁷ Tex. Transp. Code §545.355(a)

⁹⁸ Tex. Transp. Code §545.355(c)

⁹⁹ Tex. Att'y Gen. Op. No. JC-0079 (1999)

¹⁰⁰ Tex. Transp. Code §545.355(e)

4. What traffic-control devices may a county install on their roads?

The commissioners court of a county may adopt regulations establishing a system of traffic control devices in restricted traffic zones on a county road. A system of traffic control devices must conform to the Texas Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways. The commissioners court by order entered on its minutes may install and maintain any traffic signal light, stop sign, or no-parking sign that the court considers necessary for public safety.¹⁰¹

The Attorney General has opined that center stripes and speed bumps, if they are used to regulate, warn, or guide traffic, are traffic-control devices that a county may install. Center stripes must conform to standards set out in the Manual. A county may install a speed bump on a county road only if it has received permission to do so from the Texas Department of Transportation.¹⁰²

5. May a county extend traffic rules to roads in a private subdivision?

A county commissioners court may extend all or some of the traffic rules applicable to county roads to roads in a private subdivision under certain conditions¹⁰³:

- The subdivision must be located in the unincorporated area of a county with a population of 500,000 or less.
- On petition of 25 percent of the property owners residing in a subdivision in which the roads are privately maintained or on the request of the governing body of the entity that maintains those roads, the commissioners court of the county by order may extend any traffic rules that apply to a county road to the roads of the subdivision if the commissioners court finds the order in the interest of the county generally.
- The petition must specify the traffic rules that are sought to be extended. The court order may extend any or all of the requested traffic rules.

¹⁰¹ Tex. Transp. Code §251.155

¹⁰² Tex. Att'y Gen. Op. No. JC-0175 (2000)

¹⁰³ Tex. Transp. Code §542.007

6. May a county extend traffic regulations to roads within a special district?

Under the terms of an interlocal contract under Section 791.036, Government Code, the commissioners court of a county may:

- (1) by order apply the county's traffic regulations to a public road in the county that is owned, operated, and maintained by a special district and located wholly or partly in the county; and
- (2) provide for the enforcement of the regulations.

A public road that is subject to such an order is considered to be a county road for purposes of applying a traffic regulation to the public road.¹⁰⁴

X. FEES AND FINES

1. What is the proper disposition and use of motor vehicle registration fees allocated to a county?

Motor vehicle registration fees retained by a county and credited to the road and bridge fund may be used to pay obligations issued in the construction or improvement of roads, improve county roads, or construct new roads. They may not be used to pay the compensation of the county judge or a county commissioner.¹⁰⁵

A county that does not impose a road and bridge tax under Article VIII, Section 9(c) of the Texas Constitution (authorizing a special, additional fifteen cent road and bridge tax requiring voter approval) may transfer surplus motor vehicle registration fee monies from the county road and bridge fund to any county fund designated by the commissioners court, including the general fund, but may only use the monies for purposes authorized by Article VIII, Section 7-a of the Texas Constitution.¹⁰⁶ Article VIII, Section 7-a provides that motor vehicle registration fees may only be used for the purpose of acquiring rights-of-way, constructing, policing, and maintaining such public roadways, and the administration of such laws as may be prescribed by the legislature relating to the supervision of traffic and safety on such roads.

¹⁰⁴ Tex. Transp. Code §251.151

¹⁰⁵ Tex. Transp. Code §502.1985

¹⁰⁶ Tex. Transp. Code §256.007; *see* Tex. Att'y Gen. Op. No. JC-0250 (2000)

2. Is a county required to use traffic fines collected for violations of highway laws for roads and bridges?

Generally, the county is required to use a fine collected for a violation of a highway law to: construct and maintain roads, bridges, and culverts in the county; enforce laws regulating the use of highways by motor vehicles; and defray the expense of county traffic officers.¹⁰⁷

For those counties with populations less than 5,000, a county may use a fine collected for a highway law violation as the county determines appropriate if the commissioners court by resolution elects to spend the revenue for other purposes.¹⁰⁸ However, those counties may only retain from certain fines collected an amount equal to 30 percent of the county's revenue for the preceding fiscal year from all sources, other than federal funds and bond proceeds, as shown by an audit; a county must remit to the comptroller any portion of such fines collected that exceed \$1 after retaining that threshold amount.¹⁰⁹

XI. REGULATION OF OVERWEIGHT AND OVERSIZE VEHICLES

1. May a commissioners court establish load limits on a county road or bridge?

Yes. Tex. Transp. Code §251.153 authorizes a commissioners court to establish load limits for any road or bridge in the manner prescribed by §621.301 of the Tex. Transp. Code. §621.301 authorizes a commissioners court to establish load limits and limit maximum weights to be moved on or over a county road, bridge or culvert in the same manner and under the same conditions provided for by §621.102 of the Tex. Transp. Code for the executive director of TxDOT.

Under Tex. Transp. Code §621.102, the executive director of TxDOT may set a load limit on a state highway or a farm or ranch road if the executive director finds that heavier maximum weights would rapidly deteriorate or destroy the road or a bridge or culvert along the road based on an engineering and traffic investigation and considering the width, condition, and type of pavement structures and other circumstances on the road.

¹⁰⁷ Tex. Transp. Code §542.402(a)

¹⁰⁸ Tex. Transp. Code §542.402(b-1)

¹⁰⁹ Tex. Transp. Code §542.402(b-2)

Considering §621.301 and §621.102 of the Transportation Code together, it follows that a load limit may be set by a commissioners court on a county road if the commissioners court finds that heavier maximum weight would rapidly deteriorate or destroy the county road, bridge or culvert along a road based on an engineering and traffic investigation that considers the width, condition and type of pavement structures and other circumstances on the road.¹¹⁰

Concurrence from the Texas Department of Transportation (TxDOT) is required. A load limit is deemed concurred with by TxDOT 30 days after the county submits the load limit accompanied by supporting documentation and calculations reviewed and sealed by an engineer licensed in Texas. However, TxDOT may withdraw concurrence any time after the 30-day period. Counties petition TxDOT for concurrence by submitting a request to the TxDOT district engineer. A maximum weight set by a commissioners court becomes effective on a road when appropriate signs giving notice of the maximum weight are erected by TxDOT on the road under order of the commissioners court.¹¹¹

2. May a commissioners court require a permit for an overweight vehicle?

Yes, subject to several limitations. Tex. Transp. Code §623.018(a) authorizes commissioners court through the county judge issue a temporary permit for 90 days for the transportation of an overweight, oversize, or overlength commodity that cannot be reasonably dismantled on county roads that are not part of the state highway system. The commissioners court (and not the county judge) may require a bond sufficient to compensate the county for damage to the road.

However, if a vehicle has been permitted to operate in the county by the State under §623.011¹¹² or §623.402¹¹³, the county may not impose an additional fee, bond or permit requirement.

¹¹⁰ See Tex. Transp. Code §621.102

¹¹¹ Tex. Transp. Code §621.301(d)

¹¹² Tex. Transp. Code §623.011 is the default “overweight permit” statute authorizing the State to issue permits if a vehicle’s axle weight or gross weight do not exceed stated parameters.

¹¹³ Tex. Transp. Code §621.402 authorizes the state to issue a permit for “sealed intermodal shipping containers” moving in international transportation.

3. How does my county know if a vehicle has been permitted by the state to operate an overweight vehicle under §623.011 or §623.402?

Effective September 1, 2021, the Texas Department of Motor Vehicles discontinued notifying the county clerk of each county listed in an overweight vehicle permit of the name and address of the person for whom a permit was issued, the VIN and license plate of the vehicle, and forward a copy of the permit and bond or letter of credit for the permit. Now, TxDMV has made available a searchable and downloadable list by county of each permit issued under §623.011. If the county would like a copy of the permit and bond or letter of credit for the permit, the county must request it from TxDMV.¹¹⁴

4. May a county recover on an overweight permit holder's bond or letter of credit for road damage caused by the overweight vehicle?

Yes. A county may recover on the \$15,000 bond or letter of credit required for a §623.011 overweight permit.¹¹⁵ To recover on a bond or letter of credit, the county must sue the permit holder and issuer of the bond or letter of credit in the county in which the defendant resides, the county in which the defendant has its principal place of business in Texas or in the county in which the damage occurred. Additionally, a county may recover damages for negligent operation of a vehicle from the owner and operator of the vehicle under Tex. Transp. Code §251.160.

5. Does a county have the authority to enforce weight limits?

Yes. A commissioners court may authorize a county traffic officer certified by the Texas Department of Transportation to enforce weight limits.^{116 117}

A sheriff and deputy sheriffs whose certification have not been revoked by the Texas Department of Transportation may enforce weight limits.¹¹⁸

¹¹⁴ Tex. Transp. Code §623.013

¹¹⁵ Tex. Transp. Code §623.012(b)

¹¹⁶ See Tex. Att'y Gen. Op. No. KP-0245 (2019) (finding that a court would likely harmonize the State's weight officer enforcement authority in Chapter 621 and county weight enforcement authority under §251.153 of the Texas Transportation Code).

¹¹⁷ Tex. Transp. Code §251.153(b)

¹¹⁸ Tex. Transp. Code §621.401(3)

A constable and deputy constables in certain counties described in Tex. Transp. Code §621.4015, whose certification has not been revoked by the Texas Department of Transportation, may enforce weight limits.

6. May a county prohibit the use of a road?

Yes, subject to limitations and right of appeal to the county judge. Tex. Transp. Code §251.157 authorizes a “road supervisor” to prohibit or restrict use of a road if a road or bridge is unsafe, or if, because of wet weather or recent construction, the road cannot be used without probable serious damage to the road after posting notice of the terms and duration of the prohibition and providing a detour. A vehicle owner or operator may appeal the road use prohibition to the county judge, whose decision to revoke, sustain, or modify the road supervisor’s decision on the prohibition or restriction is final.

Tex. Transp. Code §251.1575 was added by the Legislature in 2013 and authorizes counties to designate an alternate route for heavy vehicles exceeding 60,000 pounds. Notice must be posted at locations that enable drivers to detour to avoid the restricted road.

7. What is the maximum weight for a vehicle or load in Texas?

Generally, 80,000 pounds is the maximum weight for a vehicle load in Texas.¹¹⁹ However, there are many exceptions, and the State grants overweight permits. For example, a vehicle powered by an engine fueled primarily by natural gas or powered primarily by means of electric battery power may weigh up to 82,000 pounds.¹²⁰ A vehicle used exclusively to transport milk may be up to 68,000 pounds.¹²¹ Vehicles transporting shipping containers may transport up to 93,000 pounds in certain counties. Vehicles transporting “intermodal shipping containers” up to 93,000 pounds in certain counties.¹²² These new overweight permits are in addition to the long list of vehicles and products excepted from the 80,000 pound limit under existing state law.

¹¹⁹ See Tex. Transp. Code §621.101(a)

¹²⁰ Tex. Transp. Code §621.101(b-1)

¹²¹ Tex. Transp. Code §622.031

¹²² Tex. Transp. Code §623.402

8. Are emergency vehicles subject to the 80,000 pound weight limitation in Texas?

No. Private and publicly owned emergency vehicles have their own rules. An emergency vehicle may not exceed the greater of the manufacturer's gross vehicle weight capacity or a gross weight or axle weights specified by statute.¹²³

XII. DRAINAGE, CULVERTS, AND CATTLE GUARDS

In previous sections, we have noted the Legislature has provided counties with the authority to create roads throughout the county. Parallel with this authority is the means for counties to protect and maintain roads and bridges after their creation through drainage systems, use of culverts, access to private property alongside the road to facilitate repair, and other issues. In KP-0456 (2024), the Attorney General wrote that Chapter 254 of the Texas Transportation Code grants a county express authority to provide drainage on public roads and bridges.¹²⁴

1. Does a county have authority to install and maintain culverts or ditches along public roads to benefit drainage?

Yes. The commissioners court has authority to order construction or maintenance of ditches.¹²⁵ The ditch must be placed on or within the exterior lines of a public road within the county and have the capacity to carry off into a natural waterway all surface water reasonably adjacent that may collect in the ditch from natural causes.¹²⁶

2. May a county expend public funds to purchase culverts and resell them to private citizens?

In an older letter opinion, the Attorney General was asked if a county could use public funds to purchase culvert materials for culvert installation and resell them to landowners whose property abuts a county road. The Attorney General opined that this was a question of fact that would center on whether the county identified "county business" in the provision of the culvert materials. Examples of county business would include ensuring culverts placed in the county right-of-way do not interfere with drainage or traffic. County business would likely not include allowing

¹²³ Tex. Transp. Code §622.952

¹²⁴ Tex. Att'y Gen. Op. No. KP-0456 (2024)

¹²⁵ Tex. Transp. Code §254.005

¹²⁶ Tex. Transp. Code §254.005

landowners to benefit from lower prices from bulk purchases or a profit for the county.¹²⁷

3. May county equipment and labor be used to maintain a culvert that is on private property assuming the property owners have given permission?

In a 2024 opinion, the Attorney General reviewed the question of whether or not a county commissioner could maintain a culvert that was on private property abutting a county road. In the presented scenario, the county argued that it received a benefit because installing the culvert preserved the county road from flooding. The Attorney General has opined that counties have general authority under Chapter 254 to maintain ditches for county roads. The county must determine the use of public resources on private property would be for a public purpose to avoid running afoul of Texas Constitution Article III, Section 52(a) and the public purpose must be a specific purpose of the county rather than a general public good. In determining whether the use of county equipment and labor on the private property serves a public purpose, the county should also determine whether the county would derive a greater public benefit than the incidental private benefit to the private landowner.¹²⁸

4. May an individual county commissioner make the determination to use county equipment and labor for work on private property?

In some cases, yes. Generally though, an individual county commissioner has no authority to bind the county. However, under Chapter 252 of the Transportation Code, an ex-officio road commissioner is granted express authority to "direct the manner of grading, draining, and otherwise improving the roads."¹²⁹ The Attorney General has suggested that this authority may give an individual commissioner some limited authority to act individually while under the general supervision of the commissioners court. The Attorney General's broad suggestion does not go beyond suggesting the authority may exist without suggesting any boundaries or specifics as to exactly what an ex-officio road commissioner might be able to do in his or her individual capacity.¹³⁰

¹²⁷ Tex. Att'y Gen. Letter Op. LO-90-22 (1990)

¹²⁸ Tex. Att'y Gen. Op. No. KP-0456 (2024)

¹²⁹ Tex. Transp. Code §252.006(f)(3)

¹³⁰ Tex. Att'y Gen. Op. No. KP-0456 (2024)

5. If installation of a ditch along a county road impairs a private owner's access to their property, must the county install a culvert?

The Attorney General has suggested that when a county's installation of a drainage ditch or other device interferes with a private property owner's access to their property, the county may be obligated to install a culvert.¹³¹

6. When a county abandons a county road, does the drainage easement revert automatically to the property owner(s) whose land abuts the abandoned road?

The drainage easement automatically reverts to the abutting landowners when a county road is abandoned if the easement was tied to its use as a public road.¹³² The county may dispose of the easement using the methods set out in Section 251.058(b) of the Transportation Code, which requires the county judge to sign an order filed in the deed records as the official instrument of conveyance from the county to the landowner. If the drainage easement is not part of a public road, it must instead be disposed of under the Local Government Code, Section 263.002.

7. What authority does a commissioners court have over cattle guards?

The commissioners court may authorize the construction of cattle guards on a county road that conform to the plans and specifications established by the court for such guards.¹³³

The commissioners court may construct a cattle guard on a county road or replace or repair a cattle guard on a county road, and pay for its construction, repair, or replacement from the county road and bridge fund if the court finds that the construction, repair, or replacement is in the best interest of the residents of the county.¹³⁴

The Attorney General has also opined that the authority of a commissioners court to erect a cattle guard is paramount to the right of a landowner to erect a gate provided that the commissioners court believes that the construction of the cattle guard is in the best interest of the residents of the county.¹³⁵

¹³¹ Tex. Att'y Gen. Letter Op. No. LO-90-22 (1990)

¹³² Tex. Att'y Gen. Op. No. GA-0471 (2006)

¹³³ Tex. Transp. Code §251.009

¹³⁴ Tex. Transp. Code §§251.009(d), 251.0095

¹³⁵ Tex. Att'y Gen. Op. No. M-0189 (1968)

Additionally, Section 251.0096 of the Transportation Code authorizes the commissioners court to remove a cattle guard from a county road if the court notifies each person who owns land adjacent to the cattle guard by certified mail not less than 90 days before the proposed removal of the cattle guard; the court must hold a public hearing on the removal if a written request for such a hearing is made before the 75th day after the date the required notice is mailed.

XIII. PROCUREMENT AND DONATIONS

1. May a commissioner unilaterally accept donations of material to aid in maintaining county roads?

No. A county can only act through its commissioners court, and individual commissioners have no authority to bind the county by their separate actions or agreements.¹³⁶ The acceptance of donations of material to aid in maintaining county roads must be approved by an action of the commissioners court.¹³⁷

2. May a commissioners court accept private donations for road maintenance and repair?

Yes. Counties are statutorily authorized to accept donations for the purpose of road maintenance and repairs.¹³⁸ Section 252.214 of the Transportation Code further states counties operating under the road commissioner or superintendent systems may accept donations of labor, money, or other property to aid in building or maintaining county roads.

For other road systems, the commissioners court is allowed to accept a donation of labor or services, gift, grant, donation, bequest, or devise of money or other property on behalf of the county for the purpose of performing a function conferred by law on the county or on a county officer.¹³⁹

A county commissioner serving as an ex-officio road commissioner may not donate material from his or her personal property to aid in maintaining roads in their precinct

¹³⁶ *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948)

¹³⁷ Tex. Att'y Gen. Op. No. JM-1155 (1990)

¹³⁸ Tex. Transp. Code §§252.019, 252.214

¹³⁹ Tex. Local Gov't Code §81.032

without the material being accepted and approved by the entire commissioners court.¹⁴⁰

3. May a county accept a donation conditioned on spending the funds to improve a particular county road?

Generally, yes. However, the Attorney General has opined that a commissioners court may not accept a donation with a specified condition that is inconsistent with other law; nor may the commissioners court delegate its decision-making authority to others.¹⁴¹ In deciding whether to improve a specific county road, the commissioners court should evaluate all factors in terms of their contribution to the county road system as a whole, subject to judicial review for abuse of discretion.¹⁴²

4. May a county start an adopt-a-county road program?

Yes. The commissioners court may enter into a partnership agreement with a person under which the person shall make a donation, gift, or grant of funds to repair and maintain a section of a county road and the county shall install signs to publicly recognize that funding is provided by the person.¹⁴³ The county has discretion on the amount of a donation, gift, or grant requirements for the adopt-a-county road program. Funds received under this type of program may only be used for the repair and maintenance of the county road subject to the agreement.

5. When purchasing road equipment, is the county required to include a request for information from bidders about the costs of the repair, maintenance, or repurchase of the equipment?

This is discretionary on the part of the commissioners court. A county is authorized to include a request for information about the costs of repair, maintenance, or repurchase of equipment in its notice of proposed purchase of earth-moving, material-handling, road maintenance or construction equipment.¹⁴⁴ The county may also require the bidder to furnish a bond to cover the repurchase costs of the equipment in a contract for the purchase of the equipment.¹⁴⁵

¹⁴⁰ Tex. Att'y Gen. Op. No. JM-1155 (1990)

¹⁴¹ See Tex. Att'y Gen. Op. No. JC-0073 (2009)

¹⁴² *Id.*

¹⁴³ Tex. Transp. Code §256.011, added by HB 2560, 89th (R) Leg., effective September 1, 2025

¹⁴⁴ Tex. Local Gov't Code §262.0255

¹⁴⁵ Tex. Local Gov't Code §262.0255

6. May a county contract set prices for multiple road material pits?

Yes. In its request for proposal the county may stipulate a price and period for road materials. Assuming the total amount of materials purchased over the life of the contract will exceed \$100,000, the contract would have to be bid out as required under the County Purchasing Act.¹⁴⁶

A county can accept multiple bids for a road construction project if each of the bidders submits the lowest and best bid for a particular location or type of material.¹⁴⁷

In determining the lowest and best bid, the commissioners court may consider the pickup and delivery locations of the bidders and the cost to the county of the materials delivered or hauled.

7. May the county use a lease-to-own contract to acquire vehicles or other equipment?

Section 271.005 of the Local Government Code authorizes counties – included within the chapter’s definition of a “government agency” – to enter into contracts on terms acceptable to the governing body including lease-to-own, installment options and other forms deemed appropriate by the county.¹⁴⁸

8. May the county purchase gravel or similar road material from a member of the commissioners court who owns or operates a gravel or caliche pit?

Yes, but if the purchases from the commissioner will exceed the limits in Chapter 171, Local Government Code, the commissioner must file an affidavit with the County Clerk disclosing his or her interest in the pit and abstain from all commissioners court proceedings concerning the purchase. These limits are further discussed in our Pitfalls and Perils of Public Office handbook.

¹⁴⁶ Tex. Local Gov’t Code §262.023, amended by SB 1173, 89th (R) Leg., effective September 1, 2025

¹⁴⁷ Tex. Local Gov’t Code §262.027(e)

¹⁴⁸ Tex. Local Gov’t Code §271.005(a)



XIV. BRIDGES

1. What authority do counties have to construct and maintain bridges?

Section 251.081 of the Texas Transportation Code provides a county with authority to “erect and maintain any necessary bridge in the county and make any necessary appropriation for that purpose.”

Counties may also erect bridges between counties in conjunction with other counties over the boundary between the counties or at any other location they choose.

Similarly, Section 251.083 of the Transportation Code authorizes a county to erect a bridge in a municipality in the manner authorized by law for the erection of a bridge outside a municipality. Additionally, a county may agree with the governing body of a municipality to jointly erect a bridge within the boundaries of the municipality and the county or municipality may issue bonds to pay its proportional share of any resulting debt.¹⁴⁹ The commissioners court of a county that owns a bridge located in a municipality is charged with keeping the bridge in good condition, although this duty does not affect the municipality’s liability for injuries caused by a defective condition of the bridge.¹⁵⁰

A commissioners court also may contract for construction of a toll bridge over a large creek or watercourse if it is inexpedient for the county to build the bridge. The court shall determine the toll imposed for crossing the bridge and may grant to the contractor the right to the tolls for a period not to exceed 10 years.¹⁵¹ The contractor is required to maintain the bridge during the term of the contract and forfeits all rights to the tolls if they fail to do so.¹⁵² Additionally, the court must require a bond in the amount of \$1,000 with a good and sufficient surety before granting a license to the contractor to build a toll bridge with the bond conditioned on the construction of the bridge and its maintenance by the contractor for the agreed upon term.¹⁵³ Finally, a commissioners court that issues bonds to construct a bridge may, under rules adopted by the court, impose tolls to pay the interest on the bonds or pay the interest and create a sinking fund for the payment of the principal at maturity.¹⁵⁴

¹⁴⁹ Tex. Transp. Code §251.083(b)

¹⁵⁰ Tex. Transp. Code §251.083(c)

¹⁵¹ Tex. Transp. Code §363.002

¹⁵² Tex. Transp. Code §363.003

¹⁵³ Tex. Transp. Code §363.004

¹⁵⁴ Tex. Transp. Code §363.005