

## MEMORANDUM

Date: December 9, 2013

To: TJ Arredondo, Hidalgo County Planning Department  
From: Josephine Ramirez Solis, Assistant Criminal District Attorney  
Michael Garza, Assistant Criminal District Attorney

RE: County Road Right-Of-Way

### Question Presented

Whether the County may enforce or go out to property and remove items obstructing county road right-of-ways.

### Facts

Homeowners in Precinct One have placed various items, including fences/gates on county roads and right-of-ways. Precinct One has sent correspondence to one homeowner which instructed them to remove anything blocking or interfering with the County's right-of-way.

### Commissioners' Court's Authority

Texas Transportation Code Section 251.016 provides that a county commissioners' court may exercise general control over all roads, highways, and bridges in the county. In addition, commissioners' court is authorized to make and enforce all necessary rules and orders for the construction and maintenance of public roads in order to discharge their duty of making the roadways safe for public travel. *See* Id. § 251.003(a)(1); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 31-32 (Tex. 2003).

The Office of the Attorney General has concluded that a commissioners' court may remove or order the removal of objects in a county road right-of-way that create a safety hazard to the public. *See* Tex. Att'y Gen. Op. No. GA-0430 (2006) at 3-4 (allowing commissioners court to remove abandoned mobile homes); Tex. Att'y Gen. Op. No. JM-1241 (1990) at 2 (allowing commissioners court to require the removal of trees or shrubs that interfere with the right-of-way). Generally, commissioners' court has authority to remove or cause to remove trees and shrubs within the right-of-way. However, the court must make a reasonable finding that the trees and shrubs would interfere with the right-of-way purposes for which the easement was obtained. *See* Tex. Att'y Gen. Op. No. JM-1241 (1990). Further, property owners have no property rights in the grounds and improvements, including trees and shrubs, placed upon a county road right-of-way. However, whether and to what extent the personal property may create a hazard to the public is a fact question. *See* Tex. Att'y Gen. Op. No. GA-0620 (2008) at 5. This means commissioners' court would have to make a finding of fact that a hazard was created by the erection of the fence in order to have it removed.

## **Sheriff's and Constable's Authority**

Texas Transportation Code Section 545.3051 grants a law enforcement agency, including sheriffs and constables, the authority to remove personal property from a roadway or right-of-way if the law enforcement agency determines that the property blocks the roadway or endangers public safety. The removal of personal property may be executed without the consent of the owner. In addition, the owner must reimburse the law enforcement agency for any reasonable costs of removal and disposition of the property.

The abovementioned statute defines personal property as a vehicle described by Texas Transportation Code Section 545.305, spilled cargo, hazardous material as defined by 49 U.S.C. Section 5102, or hazardous substance as defined by Texas Water Code Section 26.263. In this instance, the fence does not appear to fall within the statute's definition of personal property.

## **Recommendation**

The items complained of do not appear to fall within the definition of "personal property" under general law enforcement authority. Therefore, it is within the Commissioners' Court's authority to make a determination as to the interference with the County road right-of-way and potential for safety hazard. Further, Commissioners' Court has the authority to order the removal of items on or threatening the County road right-of-way.