STATE OF TEXAS §

COUNTY OF WILLIAMSON §

RESOLUTION OF THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, TEXAS IN SUPPORT OF THE BRIEFS FILED BY THE COUNTY JUDGES & COMMISSIONERS ASSOCIATION OF TEXAS AND THE TEXAS CONFERENCE OF URBAN COUNTIES REGARDING MAINTENANCE OBLIGATIONS PERTAINING TO SIDEWALKS WITHIN PUBLICALLY DEDICATED RIGHT-OF-WAY

WHEREAS, Chairman of the State of Texas House of Representatives Natural Resources Committee Jim Keffer, on behalf of the North Austin Municipal Utility District No. 1, Wells Branch Municipal Utility District, and Block House Municipal Utility District, has filed a request for an Attorney General's opinion asking whether a county that has accepted a public dedication of a right-of-way in a plat is obligated to maintain the sidewalks in that right-of-way (Request No. RQ-0061-KP); and

WHEREAS, the County Judges and Commissioners Association of Texas and the Texas Conference of Urban Counties have filed separate briefs, which are enclosed herewith and labeled Attachment 1 and Attachment 2 respectively1, addressing issues of concern for Texas counties in Request Number RQ-0061-KP; and

WHEREAS, the County Judges and Commissioners Association of Texas and the Texas Conference of Urban Counties are uniquely qualified to address the concerns and duties of Texas counties, and in particular, those issues common to fast growing urban counties such as Williamson County, Texas; and

WHEREAS, county commissioners courts in Texas have an obligation to administer their core functions and duties within their scope of authority while providing their core functions in a fiscally responsible manner in the best interests of the taxpayers; and

[1] The Texas Attorney General's Office has been provided the briefs and the exhibits referenced in such briefs. Due to such fact, the briefs without their exhibits have been attached to this Resolution.

WHEREAS, the Williamson County Commissioners Court desires to support the briefs filed by the County Judges and Commissioners Association of Texas and the Texas Conference of Urban Counties; and

THEREFORE, BE IT RESOLVED, that, on this 12th day of January, 2016, the Williamson County Commissioners Court does hereby request that the Texas Attorney General's Office adopt the reasoning, opinions, analysis and conclusions set forth in briefs filed by the County Judges and Commissioners Association of Texas and the Texas Conference of Urban Counties in relation to opinion Request No. RQ-0061-KP and specifically, find that a Texas county that has accepted a public dedication of a right-of-way that contains a sidewalk is not obligated to maintain the sidewalk in such right-of-way.

WILLIAMSON COUNTY, TEXAS

Hon. Dan Gattis
Williamson County Judge

Hon. Lisa Birkman
Commissioner, Precinct 1

Hon. Valerie Covey
Commissioner, Precinct 3

Hon. Cynthia Long
Commissioner, Precinct 2

Hon. Ron Morrison
Commissioner, Precinct 4

ATTACHMENT 1
BRIEF OF COUNTY JUDGES AND COMMISSIONERS ASSOCIATION OF TEXAS

COUNTY JUDGES & COMMISSIONERS ASSOCIATION OF TEXAS
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December 22, 2015

Office of the Attorney General, State of Texas
Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for attorney general opinion regarding whether a county that has accepted a public dedication of a right-of-way in a plat is obligated to maintain the sidewalks in that right-of-way. **RQ-0061-KP**

Dear General Paxton:

In response to the aforementioned request for an attorney general opinion dated October 21, 2015, the County Judges and Commissioners Association of Texas submits this brief. Chairman of the House Natural Resources Committee Jim Keffer, on behalf of the North Austin Municipal Utility District No. 1, Wells Branch Municipal Utility District, and Block House Municipal District, requested an opinion regarding the responsibilities of counties to maintain sidewalks on public right-of-ways that the county previously approved in the acceptance of a subdivision plat. Specifically, the Request for Opinion seeks guidance on the following:

> If a county has accepted a public dedication of a subdivision right-of-way that includes sidewalks, does the county's maintenance obligation include sidewalks, and if so can the county later divest itself of the obligation to maintain the sidewalks?

Williamson County has no obligation to maintain the sidewalks of Dallas Drive in the Milwood Subdivision located within the North Austin Municipal Utility District ("North Austin").

As a creation of the Texas Constitution, the county commissioners courts are vested only with the authority to "exercise such powers and jurisdiction over all county business" expressly given by the constitution or the legislature. TEX. CONST. art. V, § 18; TEX. TRANSP. CODE ANN. § 251.016 (A county commissioners court has "general control over all roads, highways, and bridges in the county."); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 27-29 (Tex. 2003). While commissioners court have general control over county roads, this power is limited to the actions necessary to serve the traveling public through the construction and maintenance of county ***roads***. *See Boerne*, 111 S.W.3d at 27-29; Tex. Att'y Gen. Op. No. GA-0430 (2006) (emphasis added).

The Texas Transportation Code gives counties authority over "public roads." TEX. TRANSP. CODE ANN. §§ 252.005(a),.006 (in an ex officio road commissioner system, the commissioners court adopts a system for laying out, working on, draining, and repairing the public road as directed by the ex officio road commissioner), .105(b)(3) (in a road commissioners system, road commissioners at the direction of the commissioners court, spend the money entrusted to the road commissioner on public roads), .205(a) (in a road superintendent system, the road superintendent has general supervision over public roads subject to the orders of the commissioners court), .309(a) (in a road department system, a county road engineer is responsible to the commissioners court for "the efficient and economical construction and maintenance of the county roads."). The Transportation Code also gives the county commissioners court authority to perform actions necessary to protect the public's use of public roads. *See Boerne*, 111 S.W.3d at 30 (citing *Canales v. Laughlin*, 214 S.W.2d 451, 456-57 (Tex. 1948)). This includes removing property or other obstructions from county roads and acquiring land for drainage. *See* TRANSP. CODE §§ 281.008(1); 252.111. The Transportation Code does not authorize, however, the maintenance of the right-of-way for actions not necessary for the public's use of the roads, including the maintenance of sidewalks. *See id.* Tit. 6, Subchapter C (County Road and Bridges) (subsection C does not include any reference to "sidewalk"). For example, fire hydrants and irrigation systems are located within the Williamson County's public road right-of-ways; however, Williamson County has no obligation to maintain these, as they are not related to the public's use of the roads.

The Texas Transportation Code defines a "sidewalk" as "the potion of a *municipal* street between the curb lines or lateral lines of a roadway and the adjacent property lines that is improved and designed for or is ordinarily used for pedestrian travel." TRANSP. CODE § 316.001(3) (emphasis added). A "municipal street," however, does not include a designated county road. *Id.* § 316.001(1). A municipalities, unlike counties, are statutorily required to maintain sidewalks. *See id.* §§ 311.003 (Type-A Municipalities), .004 (Home-Rule Municipality). In his request for an opinion, Mr. Flahive fails to distinguish between a municipality's obligation to maintain public sidewalks and the lack of the county's obligation to do the same, despite the expansive statutory differences between the two governmental entities. *See* RQ-0061-KP at 2.

While the vast majority of sidewalk cases pursuant to the Texas Tort Claims Act involve municipalities, a few cases involve counties. *See Porter v. Grayson Cnty.*, 224 S.W.3d 855 (Tex. App.—Dallas 2007) (curb that divided the parking lot from the sidewalk outside of the County Sub-Courthouse was not a special defect); *Sepulveda v. Cnty. of El Paso*, 170 S.W.3d 605 (Tex. App.—El Paso 2005) (while the road in question was dedicated in a plat, the county did not accept it into the maintenance system); *Brazoria Cnty. v. Davenport*, 780 S.W.2d 827 (Tex. App.—Houston [14th Dist.] 1989) (county had notice that the sidewalk on the premises of the county prenatal clinic was slippery due to faulty pipe).

However, these cases are distinguishable. In *Porter*, the court determined that the curb in question was considered part of the county roadway, not the sidewalk. *See Porter*, 224 S.W.3d at 859. In *Sepulveda*, the court found that while the county did not have a duty to maintain the county road, when the county directed a private company to build a berm on the road thus creating a dangerous condition, the county assumed the duty to warn or make safe that dangerous condition. *Sepulveda*, 170 S.W.3d at 616. Finally, in *Davenport*, the sidewalk in question was located on county property directly next to a county building, and a county nurse was leading the plaintiff and twenty other pregnant women from one part of the clinic to another. This case

involved county-owned property and did not constitute a "sidewalk" in the traditional definition found in the Transportation Code or relevant to an analysis of a duty to maintain as part of a roadway. *See Davenport*, 780 S.W.2d at 829.

Homeowners associations ("HOAs") have the authority to maintain sidewalks in subdivisions with funds received from homeowners through the collection of assessments. *See Walton v. Midland Mira Vista Homeowners' Ass'n*, No. 11-12-00214-CV, 2014 WL 4662325, at *5 (Tex. App. Sept. 18, 2014). It is quite common for subdivision declarations to include such provisions. *Id.* As Mr. Flahive notes, the Texas Water Code grants municipal utility districts ("MUDs") with the authority to maintain public sidewalks. *See* TEX. WATER CODE ANN. §§ 49.462, .464. MUDs can fund such maintenance through bonds and ad valorem taxes. *See id.* §§ 49.464(d), .4645. While Mr. Flahive would prefer that entities other than the MUD provide maintenance for sidewalks located in the MUD, counties do not have the statutory authority to maintain sidewalks, unlike cities, HOAs, and MUDs.

It is well acknowledged that a commissioners court's approval of a plat for filing purposes does not constitute acceptance of the dedicated streets and roads for county maintenance. *See Miller v. Elliott*, 94 S.W.3d 38, 45 (Tex. App.—Tyler 2002, .pet. denied); *Comm'rs Ct. v. Frank Jester Dev. Co.*, 199 S. W.2d 1004, 1007 (Tex. Civ. App.—Dallas 1947, writ ref d n.r.e.); Tex. Att'y Gen. Op. Nos. JC-503 (2002), JC-0172 (2000), JM-317 (1985), JC-503 (2002) (emphasis added). A dedication of streets and roads on a plat constitutes a mere offer. *See Frank Jester Dev. Co.*, 199 S.W.3d at 1007. Dedication in the plat does not make them county roads, and as such, the county has no obligation to maintain them unless the county formally accepts the dedication and the roads into the county maintenance system. *See id.; see also* Tex. Att'y Gen. LO-95-064 (1995). Once accepted by an official act of the commisisoners court, the county has the obligation to maintain the streets. *See Frank Jester Dev. Co.*, 199 S. W.2d at 1007.

The Texas Local Government Code requires a subdivider of a tract in an unincorporated area of the county to prepare and have recorded in the county clerk's records a plat of the subdivision. *See* TEX. LOC. GOV'T CODE ANN. § 232.001(a). The plat must include the streets, alleys, and other areas "to be dedicated to public use." *Id.* § 232.001(a)(3). The plat may not be recorded until the plat is approved by the commissioners court. *Id.* § 232.002(a). The approval of a plat and filing of the plat in the county clerk's records does not constitute acceptance of the roads, streets, and other public right-of-ways for county maintenance. *See Frank Jester Dev. Co.*, 199 S.W.3d at 1004; *see also* Tex. Att'y Gen. LO-95-064. Acceptance of the roads included in the plat dedication must be approved by the commissioners court and notated in the court's minutes or established by implication in some other method. *See Frank Jester Dev. Co.*, 199 S.W.3d at 1004; *see also* Tex. Att'y Gen. LO-95-064 (prescription, implied dedication, etc.).

Williamson County approved plats in 1984 and 1985 for the Milwood subdivision that dedicated rights-of-way to Williamson County, including Dallas Drive. The plat includes the following language:

> Said Commissioners Court assumes no obligation to build or maintain any of the streets, roads, or other public thoroughfares shown on this plat, or of constructing any of the bridges or culverts in connection therewith. It is further understood that upon completion of the aforesaid obligations of the developer and 60% occupancy of the lots along the roadways and streets in the subdivision has been achieved, and all driveway drainpipes have been installed

> on written permission from the county commissioners court, [ ] assumes full responsibility for maintenance of said streets and roads.

See RQ-0061-KP, Exhibit B.

The first sentence in this plat approval is very similar to the language in *Kunefke v. Calhoun County*, in which that court found that while the Calhoun County Commissioners Court accept the subdivision plat, the streets were not accepted for county maintenance. *Kunefke v. Calhoun Cnty.*, No. 13-05-006-CV, 2006 WL 1553261 (Tex. App. June 8, 2006). The plat in *Kunefke* contained an express dedication of "the use of the roads, streets, waterways, and passageways to the public forever." *Id.* at *1. However, the plat also included language stating that the streets were "not accepted for county maintenance at this time" and that "the streets are not being accepted for county maintenance until they are constructed in accordance with County regulations." *Id.*

Here, the Williamson County Commissioners Court clearly stated that the county assumed no obligation to maintain any of the street, roads, or other public thoroughfares in the Milwood subdivision. *See* RQ-0061-KP, Exhibit B. Additionally, the plat states that once 60% occupancy of the subdivision is achieved, the county would assume full responsibility "for the maintenance of said streets and roads." *Id.* Nowhere in the plat acceptance does it state that the county would maintain the sidewalks located in the Milwood subdivision. *Id.* The only reference to sidewalks on the plat is contained in the "Sidewalk Note" which only designates the location of the sidewalks in the Milwood Subdivision. *Id.* ("Sidewalks shall be located on both sides of Dallas Drive, the east side of Dringenberg Drive, the south side of Saralee Trial and North Ute Trail.")

Williamson County adopted subdivision regulations on October 8, 1979. *See* Williamson County Subdivision Regulations 1979, Exhibit B. There regulations were on record at the time the plat for the Milwood Subdivision was reviewed and accepted by the county. *Id.* These regulations state that:

> The owners (*sic*) or owners shall be responsible for maintenance of all streets or roads within a subdivision until such time as there is 60% occupancy of, or improvement by construction of homes on 60% of said streets or roads shown on the subdivision. The County will then accept the maintenance of said ***streets***. When accepted for maintenance by the County, such maintenance shall include the moving (*sic*) right-of-way between property lines and curb and maintenance of the median in divided streets. In the event an owner desires to obtain acceptance by the County of said roads and streets for permanent maintenance prior to the time of 60% occupancy of the lot adjourning said streets or roads . . . said owner or owners shall give a good and sufficient surety bond . . . for each linear foot of street or road to be maintained . . . ."

Id.

The statutory rule of construction is to ascertain and give effect to the intent of the legislative body. *Zanchi* v. *Lane*, 408 S.W.3d 373, 376 (Tex. 2013). Commissioners court duties include legislative, executive, and judicial functions. *Brown v. Lubbock Cnty. Comm'rs. Court*, 185 S.W.3d 499, 505 (Tex. App.—Amarillo 2005, no pet.). When the commissioners court adopts regulations, such as subdivision regulations, it is acting in a legislative capacity; therefore,

the legislative intent behind the regulations is revealed in the legislative language. *See id.*; *In re Office of Att'y Gen.*, 422 S.W.3d 623, 629 (Tex. 2013) (orig. proceeding) (quoting *Entergy Gulf States, Inc.* v. *Summers*, 282 S.W.3d 433, 437 (Tex.2009)).

Under the subdivision regulations, Williamson County provided conditions for acceptance of paved streets into the county road system. It is clear from the language in the subdivision regulations that Williamson County never accepted the responsibility to maintain sidewalks within subdivisions. If that was the case, the commissioners court would have included language incorporating the sidewalks and establishing construction standards for them. Additionally, the commissioners court would have included language and required a good and sufficient bond for each linear foot of sidewalks to be maintained as sidewalks in subdivisions require funds for such maintenance. The 1979 subdivision regulations do not include any reference to sidewalks and do not include provisions for the maintenance for structures other than the paved streets necessary to protect the public's use of public roads.

On May 31, 1988, the Williamson County Commissioners Court accepted the *streets* in the Milwood Subdivision for county maintenance. *See* Order Adopting Milwood Streets, Exhibit A. At no point did the county accept the sidewalks in the Milwood subdivision. *Id.* The stated purpose of the 1979 subdivision regulations were to "[p]revent the Williamson County Road Bridge Department from being burdened with substandard streets or roads in the future." *Id.* Milwood is also subject to mandatory deed restrictions that state, "[t]he owner of each lot shall construct, at his cost and expense and prior to his occupancy of the dwelling, sidewalks, if any, as required by the City of Austin, or any other political subdivision in the State of Texas in which the lot is located, or as set forth on the recorded subdivision plat." *See* Milwood Deed Restriction § III, Exhibit F. The deed restrictions also require homeowners to "maintain premises and the improvements situated thereon in a neat and orderly manner." *See id.* § V. Failure to maintain such improvements, including sidewalks, allows the Architectural Control Committee "to enter upon said lot and to repair, maintain and restore the lot and exteriors of the buildings and any other improvements erected thereon, all at the expense of the owner." *Id.*

The language contained in the subdivision plat, order adopting the subdivision streets, and the deed restrictions makes it clear that maintenance of the sidewalks in the Milwood subdivision was never accepted by Williamson County and the obligation of the homeowner. *See* RQ-0061-KP, Exhibit B ("[county] assumes full responsibility for maintenance of said *streets and roads*"); Order Accepting Streets, Exhibit C ("Motion made . . . to accept the *streets* in Milwood Subdivision . . . for County maintenance."); Milwood Deed Restrictions §§ III, V, Exhibit F ("[t]he owner of each lot shall construct, at his cost and expense and prior to his occupancy of the dwelling, *sidewalks*, if any, as required by the City of Austin, or any other political subdivision in the State of Texas in which the lot is located, or as set forth on the recorded subdivision plat . . . maintain and restore the lot and exteriors of the buildings and any other improvements erected thereon, all at the expense of the owner."). To construe this language to impart any type of maintainenace obligation on the county would be contrary to the clear meaning and intent contained in these documents and contrary to the legislative intent of the commissioners court.

Similar language appears in other subdivisions throughout Williamson County. *See* Blockhouse Creek Deed Restrictions art. 5.15, Exhibit G ("The Owner of each lot is hereby required to construct or cause to be constructed a concrete sidewalk in the public street right-of-way adjacent to such Lot in accordance with the specifications below . . . If not otherwise

provided, the Owners shall extend sidewalks . . . in accord with all Federal, State, County and City regulations. [ ]. Each Owner shall be responsible for the maintenance and repair of the sidewalk adjacent to his lot after construction." Executed Septemeber 9, 1986); *see also* Cat Hollow at Brushy Creek Deed Restrictions, Exhibit H § 3.33 ("The Owner of each Lot is hereby required to construct or cause to be constructed a concrete sidewalk in the public street right-of-way adjacent to each Lot in accordance with the specifications set forth below . . . Each Owner shall be responsible for the maintenance and repair of the sidewalk adjacent to his Lot after construction." Executed August 22, 1989); *see also* The Meadows of Brushy Creek Covenants and Restrictions, Exhibit I ("The Owner of each Lot is hereby required to construct or cause to be constructed a concrete sidewalk in the public street right-of-way adjacent to each Lot in accordance with the specifications set forth below . . . Each Owner shall be responsible for the maintenance and repair of the sidewalk adjacent to his Lot after construction." Executed December 31, 1986). It is clear that many homeowners in unincorporated parts of Williamson County are obligated to maintain the sidewalks located on their property. The examples noted above demonstrate that these deed restrictions were executed contemporaneously as the subdivision the subject of this request. It was common practice for subdivision to require homeowners to maintain the sidewalks in the subdivision at the time of Milwood's creation and continues to be the county policy today.

On July 20, 1992, acting pursuant to section 232.002 of the Texas Local Government Code, the Commissioners Court of Williamson County adopted new subdivision regulations governing the subdivision of land in the county. *See* Williamson County Subdivision Regulations 2000, Exhibit C. These regulations were further revised on October 19, 1992; March 15, 1993; January 24, 1995; and February 1, 2000. The current version of subdivision regulations were revised on May 9, 2013. *See* Williamson County Subdivision Regulations, revised draft as of 5/9/2013, Exhibit D. In these more recent regulations, Williamson County included specific language that excludes sidewalks from county maintenance.

1) "If landscaping and/or irrigation are proposed within the right-of-way, the owner shall create a body (municipal utility district, homeowners association, neighborhood association, etc.), that will be responsible for the maintenance and liability of the landscaping and/or irrigation system. This body shall have assessment authority to insure the proper funding for maintenance. A landscape maintenance agreement will be executed between Williamson County and the body prior to the acceptance of construction." *See id.* § 5.7, revised draft February 1, 2000 (underlined section added to the February 2000 version, all other sections present in earlier drafts).

2) "The County will not accept a road for maintenance without the following preconditions: A dedication to the public of an easement of fee interest in the entire roadway . . . ." Williamson County Subdivision Regulations § B3.5.1, revised draft February 1, 2000 (underlined section added to the February 2000 version, all other sections present in earlier drafts), Exhibit D.

3) "The County will assume no responsibility for drainage ways or easements in the subdivision, other than those running on or along the streets and roads. Maintenance and liability of landscaped areas within the right-of-way will be the responsibility of the developer, the municipal utility district, neighborhood association, or other owner entity." *Id.* § 6.6, revised draft February 1, 2000 (language in section 6.6 included in prior versions of this subdivision regulation).

4) "Where the subdivision affects a county road, the Commissioners' Court shall determine the right-of-way width which will be necessary for the maintenance and improvement of the road." *Id.* § 6.6, revised draft February 1, 2000

5) "Any improvements proposed within the right-of-way including, but not limited to, irrigation, landscaping, sidewalks, subdivision identification signs, etc. shall be maintained in accordance with an executed license agreement between the County and the Owner." *Id.* § 5.3, revised draft as of 5/9/2013.

6) "If landscaping, irrigation, sidewalks, illumination, water quality ponds, etc. are proposed within the right-of-way, the Owner shall create a mandatory homeowners association that shall be responsible for the maintenance and liability of these features. This organization shall have assessment authority to insure the proper funding for maintenance. A maintenance agreement shall be executed between the County and the organization prior to acceptance of the construction." *Id.* § 7.8, revised draft as of 5/9/2013.

7) "The County will assume no responsibility for drainage ways or easements in the subdivision outside of the roadway right-of-way. Maintenance and liability of improvements including but not limited to landscaping, illumination, sidewalks, water quality ponds, or any other improvements required by other governmental agencies shall not be the responsibility of the County." *Id.* § 8.6, revised draft as of 5/9/2013

Based on these provisions of subdivision regulations that have been on file since prior to Williamson County's approval of the streets in the Milwood Subdivision and additional provisions adopted more than twenty (20) years ago, Williamson County does not have the obligation to maintain the sidewalks in subdivisions in the county. The county has no statutory authority to maintain sidewalks and to infer such a requirement would be inapposite to legislative intent. Cities, MUDs, HOAs, and homeowners, on the other hand, have the legal authority to maintain the sidewalks at issue and also the legal mechanisms to provide funding for the projects. Therefore, Williamson County does not have either the authority or obligation to maintain the sidewalks in question. Even assuming that a county could assume the obligation to maintain sidewalks, there are clearly factual issues concerning the status of the sidewalks in question that prevent the determination of their status through the opinion process.

Sincerely,

James P. Allison
General Counsel

ATTACHMENT 2
BRIEF OF TEXAS CONFERENCE OF URBAN COUNTIES

TEXAS Conference of
Urban Counties

Chairman
Commissioner
Bobbie Mitchell
Denton County

Chair Elect
Judge
Veronica Escobar
El Paso County

Immediate Past Chair
Commissioner
Eddie Arnold
Jefferson County

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Grayson ~ Gregg
Guadalupe ~ Harris
Hays ~ Hidalgo
Jefferson ~ Johnson
Kaufman ~ Lubbock
McLennan ~ Midland
Montgomery ~ Nueces
Potter ~ Randall
Rockwall ~ San Patricio
Smith ~ Tarrant
Travis ~ Webb
Williamson ~ Wise

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Attn: Opinion Committee
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Austin, Texas 78711-2548

December 14, 2015

Re: **RQ-0061-KP**
Duty of Counties to Maintain Sidewalks

Dear Opinion Committee Members:

Whether a county has a duty to maintain a sidewalk may be a question that requires the resolution of fact, and therefore not appropriate for the opinion process. For example, whether a county owns the underlying real property in fee or merely has an easement will be a threshold question. Likewise, specific dedication and acceptance language may be determinative, as may be specific county subdivision regulations pertaining to objects in county owned right-of-way.

If, however, it is determined that the instant request is appropriate for the opinion process, then we note that the request does not involve a situation in which the county has expressly accepted responsibility for maintaining sidewalks. Instead, the instant request covers situations in which a county has approved plats that indicate the developer will construct sidewalks within the right-of-way dedicated to the public and the county has accepted only the roads into the county road system.

In the situation covered by the instant request, a county does not assume legal responsibility for maintaining sidewalks merely by approving a plat or accepting a road into the county road system.

As pointed out in the brief of Armbrust & Brown, PLLC, submitted with the opinion request, there is no authority holding a county has an obligation to maintain sidewalks within right-of-way dedicated to the public. Armbrust & Brown, however, assert that because sidewalks are defined in the Transportation Code to be part of a street, a county's obligation to maintain roads must by necessity include an obligation to maintain any sidewalks located in the right-of-way of the road.[1]

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[1] Armbrust & Brown cite a Texas Supreme Court case that references old appellate court cases to support Armbrust & Brown's assertion that sidewalks are part of a street itself. The Texas Supreme Court case also references § 316.001, Transportation Code.

The cited cases concern municipal streets, as does § 316.001,Transportation Code, which states:

> Sec. 316.001. DEFINITIONS. In this subchapter:
>
> (1) "Municipal street" means the entire width of a way held by a municipality in fee or by easement or dedication that has a part open for public use for vehicular travel. The term does not include a designated state or federal highway or road or a designated county road.
>
> ...
>
> (3) "Sidewalk" means the portion of a municipal street between the curb lines or lateral lines of a roadway and the adjacent property lines that is improved and designed for or is ordinarily used for pedestrian travel.

The cited cases and § 316.001, Transportation Code, are not relevant to the instant opinion request as it does not concern municipal streets.

§ 541.302(16), Transportation Code, defines "sidewalk" to mean the portion of a street that is: (A) between the curb or lateral line of a roadway and the adjacent property line; and (B) intended for pedestrian use. But Subtitle C of the Transportation Code ("Rules of the Road") does not ascribe ownership of, or a duty to maintain, sidewalks to any individual or entity. Instead, the subtitle addresses permitted uses of sidewalks. The definition of "sidewalk" distinguishes accommodations for public pedestrian travel from private accommodations, such as private walkways.

Armbrust and Brown assert that a county that has accepted a publicly-dedicated road has a responsibility to maintain the road. That statement should not be interpreted to mean approval of a plat that includes a dedication of a road imposes a maintenance obligation on the county. Rather, only acceptance of the road into the county road system will result in a maintenance obligation on a county. Here is a good explanation of the law on this point as found in Attorney General Opinion No. GA-0513 (2007):

> It has long been established that "dedication is a mere offer" and a commissioners court's approval of a plat filing that contains a dedication does not constitute an acceptance of the dedication. *Langford v. Kraft*, 498 S.W.2d 42, 49 (Tex. Civ. App.- Beaumont 1973, writ ref d n.r.e.; writ dism'd w.o.j); see also TEX. LOC. GOV'T. CODE ANN. § 232.002 (Vernon 2005) (requiring county approval of plats). Once a road dedicated to the public is accepted, either expressly by the county or by the public on the county's behalf, it is a public road. *See Stein v. Killough*, 53 S.W.3d 36, 42 n.2 (Tex. App.- San Antonio 2001, no pet.). However, until a county, through its commissioners court, expressly accepts a public interest in a road dedicated in a plat, that road is not included in the county's road maintenance system, even though the road may have already become public by the public's acceptance of it. *See Miller v. Elliott*, 94 S.W.3d 38,45 (Tex. App.- Tyler 2002, pet denied); *Comm'rs Ct. v. Frank Jester Dev. Co.*, 199 S.W.2d 1004, 1006-07 (Tex. Civ. App.- Dallas 1947, writ ref'd n.r.e); Tex. Att'y Gen. Op. No. GA-0139 (2004) at 4.

GA-0513 at 2.

A county does not have an obligation to maintain a road dedicated to public use unless the county accepts the road into the county road system by official action of the commissioners court, and a county likewise does not have an obligation to maintain sidewalks simply because an approved plat shows sidewalks within the right-of-way dedicated for public use.

And a county does not have an obligation to maintain a sidewalk within the right-of-way of a road accepted into the county road system. As previously stated, there is no statute requiring such maintenance, and no court has ever found such an obligation.[2] Instead, as the holder of an easement, a county is free to permit private structures – such as sidewalks – within the right-of-way, subject to removal at the request of the county such as when the county needs the right-of-way for road purposes, including widening, road maintenance, drainage, etc.

Additionally, the assertion that a county must follow statutory procedures for "discontinuance" of a road when discontinuing a sidewalk is an unreasonable interpretation of the relevant statutory provisions on discontinuance of a public road. The provisions of Sections 251.001 and 251.051, Transportation Code, on road discontinuance were intended to only apply to a "public road" used for vehicular passage, not pedestrian use, as indicated by the requirement that a "replacement" road be established prior to road discontinuance. It is strained reasoning

[2] *See Canales v. Laughlin*, 147 Tex. 169, 214 S.W.2d 451, 453 (Tex. 1948) (county commissioners court can only exercise such powers as conferred by the Texas Constitution or statute).

unsupported by legal authority to suggest that road discontinuance and establishment of a replacement road for vehicle use equally applies to sidewalks for pedestrian use.

Armbrust & Brown has not raised the issue of private driveways that encroach public right-of-way. Counties don't maintain the portion of private driveways between the edge of the right-of-way dedicated to public use and the roadway used for vehicle traffic. Yet Armbrust & Brown's logic would require such maintenance by a county. The law should not be interpreted to impose such a drastic financial obligation on taxpayers unless the obligation is express in statute.

No court has ever found that a county may be liable for the condition of sidewalks located within the right-of-way of a county road. But whether or not such liability may exist is simply not relevant to the issue of whether a county has a duty to maintain sidewalks. For instance, a county may avoid liability under the Tort Claims Act by notifying those that installed sidewalks of their obligation to maintain the sidewalks.[3]

One additional wrinkle is involved here, and that is the overlapping authority of counties and municipalities regarding approval of development plats. Prior to 2001, both a county and a municipality had authority over platting within the extraterritorial jurisdiction of the municipality. Municipalities have long had authority to require amenities, such as sidewalks, as a condition of approving proposed development plats; while counties had no such authority.[4] So when submitting a plat for approval, a developer may have been required to include sidewalks to satisfy municipal requirements. By approving that plat – a ministerial requirement if the plat met all of the county's subdivision regulations – the county did not accept the responsibility for maintaining the sidewalks.[5]

The Milwood subdivision mentioned in the Armbrust & Brown brief was built in several sections, plats for which were approved by both Williamson County and the City of Austin over the course of several years. At no time did Williamson County express an intent to accept maintenance responsibility for any sidewalk. This is true not just for Milwood, but for all development plats approved by Williamson County. The Williamson County Sidewalk Maintenance and Repair Policy ("Sidewalk Policy") was adopted in 2013 in response to numerous requests to the county for sidewalk repair. The Sidewalk Policy was adopted not to divest Williamson County of any maintenance obligation (as it had none), but rather as a means to notify the public that the County was not responsible for sidewalk maintenance.

Thank you for your kind consideration of these comments.

Sincerely,

John B. Dahill
General Counsel

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[3] Attachment 1 is restrictive covenants for a subdivision in Williamson County that clearly place the obligation for construction and maintenance of sidewalks on abutting property owners.

[4] Attachment 2 is the restrictive covenants for Milwood section 27-A filed in the real property records of Williamson County. Note the developer imposed a requirement on homeowners to construct sidewalks as required by the City of Austin or any other political subdivision. By passing this requirement to homeowners, sidewalks may not be constructed until long after plat approval. Why would a county accept maintenance responsibilities for infrastructure that had not yet been constructed and, therefore, could not be inspected?

[5] Attachment 3 is an example of Williamson County Commissioners Court action approving preliminary plats for the Milwood subdivision. Attachment 4 is an example of Williamson County Commissioners Court action accepting streets in the Milwood subdivision into the county road system for maintenance.