

Kenneth Liggett

From: tac-jud@list.county.org on behalf of Jim Allison [j.allison@allison-bass.com]
Sent: Monday, December 16, 2013 5:11 PM
To: TAC-Judicial
Subject: [TAC-Judicial] RE: County Road Debris

Message from: j.allison@allison-bass.com

Judge Liggett: Under Section 252.006(f), Transportation Code, a county commissioner, acting as ex officio road commissioner, shall determine the character of work to be done on the roads and direct the manner of grading, draining, or otherwise improving the roads. This statute provides sufficient authority for a precinct (ex officio road) commissioner to properly dispose of debris and other worthless materials from the ROW. However, the commissioner does not have unilateral authority to contract with other parties. See AG Opinion GA-295 (2005). To dispose of county road debris on private property and agree to burn the debris would require permission by a contract with the private property owner, approved by Commissioners Court. While disposal of the debris on adjacent private land to avoid the public cost of other disposal likely meets the public purpose required by Article III, Section 52, Texas Constitution, an individual commissioner lacks the authority to enter into an agreement on behalf of the county. If a commissioner disposes of such material and then burns it without an agreement approved by the Commissioners Court, he will be acting without authority. Such acts may result in personal liability for the individual commissioner. The county will likely have no liability for such unauthorized acts, unless the Commissioners Court ratifies them. Jim Allison

From: Kenneth Liggett [<mailto:ccjudge@claycountytexas.com>]
Sent: Wednesday, November 13, 2013 2:29 PM
To: Jim Allison
Subject:

Commissioner A. J. Peek said he talked to you at Vernon concerning the burning of tree limbs he had placed on private property. I agree that using common sense he should be allowed to go back on private property and clean up his mess. My CC does not think it is legal for him to go back on private property, nor do they want to accept any liability should the fire get out.

Mr. Peek said that under the agreement to place the surplus materials on private property there was no right to reenter the property, but that you had an alternative method of him burning the material.

- 1> I need to know the legal basic for him reentering the property to burn the material.
- 2> I need to know the statue or AG opinion allowing the agreement to enter the property in the first place.251.003 (1) is the only possible place I could find that might give us the right to enter.

As always Thanks,, Kenneth

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