



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 13, 1997

The Honorable Danny Buck Davidson  
Panola County Criminal District Attorney  
County Courthouse  
110 South Sycamore  
Carthage, Texas 75633

Letter Opinion No. 97-021

Re: Status of county road and bridge employees  
if a county returns to the ex officio road  
commissioner system pursuant to subchapter A,  
chapter 252, Transportation Code (ID# 39079)

Dear Mr. Davidson:

You ask whether, in the event that Panola County ceases to operate its road and bridge department as a County Road Department of the sort authorized by subchapter D, chapter 252 of the Transportation Code, and instead operates under the ex officio road commissioner system authorized by subchapter A, chapter 252, the employees of the road and bridge department "become unemployed" when the ex officio system begins in operation. With the arguable exception of the county road engineer, about whom you do not appear to be asking, no employee would necessarily be discharged in the event of a change in the road administration system. However, we note that nothing in chapter 252 appears to treat such employees as other than at-will, and that commissioners have under sections 252.006(c) and 252.006(d) the power to hire and fire any employee "in the commissioner's precinct." Accordingly, no employee has a legally enforceable expectation of continued employment.

Subchapter D, under which Panola County now operates its road administration system, provides for a county road department the policy-making body of which is the commissioners court, the chief executive officer of which is the county road engineer, and which is staffed by administrative personnel and road employees. Transp. Code § 252.302. The county road engineer holds office for an indefinite term and may be removed by a majority vote of the commissioners court, such removal to be effective on the thirtieth day after he has had written notice of the court's intent. He may request and receive a public hearing on the removal. *Id.* § 252.307. The engineer, subject to the court's approval, has the power to hire and fire the department's personnel, and to authorize administrative personnel to hire and fire subordinates. *Id.* § 252.309.

The subchapter A system, to which it is proposed that Panola County convert its road administration system, is otherwise known as the "precinct" or "ex officio road commissioner" system. Under the ex officio road commissioner system, each member of the commissioners court is responsible for the road system in his or her precinct, including vehicles, tools, and machinery. *Id.* § 252.006(a). The commissioner directs the laying out of new roads, the construction or changing of roads, and the building of bridges. *Id.* § 252.006(b). He or she has the power to hire and fire

employees in his or her precinct who are paid from the county road and bridge fund. *Id.* §§ 252.006(c), .006(d).

As is clear from the above description, one principal difference between the two administrative systems is that the duties of the road engineer in a subchapter D system are essentially those of the ex officio commissioners in a subchapter A system. Accordingly, it would appear that, upon the conversion of a road administration system from a subchapter D to a subchapter A system, the position of road engineer would be abolished by operation of law. However, since your question appears to concern the ordinary employees of the road department, we do not decide this question.

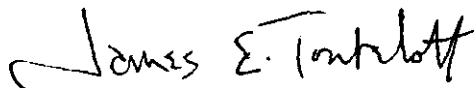
As to the ordinary employees, we find nothing in the statute which would require their dismissal if the road administration system changes. We note, however, that under section 252.006(d), an ex officio road commissioner has the right to discharge any such employee in his or her precinct who is paid from the road and bridge fund. We are unaware of any contractual basis on which any such employee may claim tenure of office. Moreover, it would appear that Panola County has too small a population to be eligible to create a county civil service system under chapter 158 of the Local Government Code.<sup>1</sup>

In Texas, absent contractual or civil service protection, a public employee may be terminated at will. *See* Letter Opinion No. 96-139 (1996). Accordingly, an ex officio road commissioner under a subchapter A system may dismiss an employee in his precinct for any reason or no reason, so long as he does not do so for an unconstitutional reason.<sup>2</sup> Such employees, therefore, have no legally enforceable expectations of continued employment.

### S U M M A R Y

Should a county with a population of less than 200,000 decide to change its road administration system from the county road department system described in subchapter D, chapter 252, Transportation Code to the ex officio road commissioner system of subchapter A, chapter 252, the road department employees have no legally enforceable expectation of continued employment.

Yours very truly,



James E. Tourtelott  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>An eligible county is defined as one "with a population of 200,000 or more." Local Gov't Code § 158.002. According to the 1996-97 Texas Almanac, the population of Panola County is 22,653.

<sup>2</sup>We caution, however, that such a commissioner would be well advised to apprise himself of the limitations on patronage hiring and discharge which have been articulated by the United States Supreme Court and the Court of Appeals for the Fifth Circuit. *See* Letter Opinion No. 96-139 (1996).