

August 23, 2013

VIA CERTIFIED MAIL

Hon. Phil Wilson
Executive Director
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

Hon. John A. Barton, P.E.
Deputy Executive Director
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

Hon. Trent Thomas
Senior Legislative Affairs Representative
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

RE: 60 day moratorium on Pavement to Gravel Proposal

Director Wilson,

Thank you for attending the meeting in San Antonio on August 20. I, along with the other County Judges and Commissioners from Dimmitt, Atascosa, McMullen, Live Oak and Wilson counties in attendance, certainly appreciate the fact that TxDot is faced with the same problems we face...too much heavy traffic on our road system, and too little revenue to address the problem.

However, as noted by Sen. Uresti, Hegar and Zaffirini at the San Antonio meeting, this plan was not communicated to the appropriate Transportation Committees during the recent legislative session, and now, the proposal is being pushed forward too aggressively to allow for deliberative decision making by local officials.

As you know, LaSalle County has engaged in an aggressive program to improve county roads, including issuing bonds to support from our tax base the upgrading of several roads from gravel to paved surfaces. However, our planning was based upon the assumption that existing State funded Farm-to-Market paved roads would remain in place to receive that same heavy truck traffic coming from these county funded roads. In La Salle, County 15 miles of FM 469, from I-35 West to FM 468, and 3 miles on FM 3408, from I-35 to end of roadway are proposed at this time for conversion from paved to gravel roadways. We are receiving considerable push-back from our tax payers over this TxDot proposal, and we as a Commissioners Court are frustrated that after incurring considerable expense to plan for very expensive road improvements, we learn that other critical roadways under the state system will be degraded to a gravel status.

TxDot has suggested that perhaps the County assume responsibility for these State highways. Under Texas law, the counties may hold title their roads by deed, but even then are deemed to be only trustees for the use and benefit of the State of Texas. See Attorney General Opinion MW-870. With the advent of greater oil and gas production in the Eagle Ford Shale, counties have been approached to lease their deeded roadways for their underlying mineral interests to be included in pooling agreements. However, counties cannot accept these offers, but the State of Texas can and does lease the county owned-ROW through the GLO. The State realizes millions of dollars in royalty payments from county road right of ways. Existing state law dedicates these funds to both education and to the state general fund. Article 52.025 of the Natural Resources Code presently allows the Comptroller to credit the General Revenue Fund with amounts received from lease payments paid to the State of Texas on both school lands and "other areas", which includes road right of ways, with two-thirds of these funds going to education, and one-third to the general fund.

If the State of Texas were to be willing to assign to the Counties all lease payments received by the state from leases of land related to county road right of ways, the Counties might have some incentive to participate in a "turnover proposal", but without additional revenue, the County must consider this not only

an unfunded mandate, but a mandate issued without legislative authority by a State Agency. Under Section 201.103, Transportation Code, TxDOT has the authority to abandon or close a state highway and remove that segment from the state highway system, but that section does not impose a duty on the county or city to assume maintenance of these abandoned highways. Chapter 311, Transportation Code has been construed to authorize municipalities to maintain and control city streets, but again, there is no “duty” imposed by this statute for a city to assume financial responsibility for an abandoned state highway segment. There is no statute that requires counties to accept or maintain abandoned state highways. Thus, it appears that absent outright abandonment, TxDOT must remain responsible for the cost of maintenance of a segment converted from pavement to gravel.

We will continue to evaluate our options, but frankly, without some mechanism to obtain additional funding, LaSalle County will be unable to agree to any turnover, and will be opposed to the entire “pavement to gravel” proposal.

Sincerely,

Joel Rodriguez

cc: Sen. Judith Zaffirini
Sen. Carlos Uresti
Sen. Robert Nichols
Sen. Glen Hegar
Rep. Ryan Guillen
Rep. Larry Phillips
Rep. Joseph Picket
Rep. Jim Keffer