



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

August 16, 2023

The Honorable Landon Ramsay
Franklin County Attorney
200 North Kaufman
Mt. Vernon, Texas 75457

Opinion No. AC-0003

Re: Authority of a county commissioners court to adopt and enforce a moratorium regarding commercial solar projects (RQ-0500-KP)

Dear Mr. Ramsay:

You transmit to us a proposed moratorium related to “commercial solar projects in Franklin County” (“County”).¹ We understand you advised the Franklin County Commissioners Court (“Commissioners Court”) that a “moratorium that limited what a solar company could do . . . was beyond the scope of the authority of the court” and unenforceable;² nevertheless, you write to ask whether “adopting the moratorium, as written, [is] a valid exercise of the Commissioners Court’s authority under the Constitution and Laws of the State of Texas” and enforceable. Request Letter at 1.

The document you sent us “declare[s] a moratorium on the siting, construction, installation, operation, permitting, and licensing of any Commercial, Utility Scale Solar Energy Facility within the County.” Attachment at 1. It further provides that “[n]o person, organization, or entity shall start or engage in the construction or operation of . . . or test for the suitability of sites” for a commercial utility-scale solar-energy facility (“solar facility”). *Id.* And while the moratorium is in effect, the document provides that “no officer, employee, office, administrative board, or agency

¹Letter and Attachment from Honorable Landon Ramsay, Franklin Cnty. Att’y, to Off. of the Att’y Gen. at 1–5 (Feb. 21, 2023), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2023/RQ0500KP.pdf> (“Request Letter” and “Attachment,” respectively).

²Franklin County Commissioners Court Meeting Minutes (Oct. 24, 2022), *available at* <https://files.secure.website/wscfus/7667746/30825435/minutes-october-24-2022-regular-session.pdf>.

of the Court [may] accept, process, approve, deny, or in any other way act upon any application or request for any type of license, road permit, or approval related to a” solar facility.³ *Id.*

We do not generally construe local enactments, such as the moratorium, or resolve fact questions. *See* Tex. Att’y Gen. Op. No. KP-0111 (2016) at 4 (explaining “this office does not construe county ordinances or policies or resolve fact questions, which are matters for the commissioners court to determine in the first instance”). We can, however, address specific legal questions. The materials you provide refer to several provisions of the Transportation Code and briefing⁴ received by our office cites to Health and Safety Code section 121.003 as authority for the moratorium. *See* Attachment at 2, 4–5. Thus, we consider a commissioners court’s authority under only these provisions and do not consider a county’s authority to impose a moratorium under its other regulatory powers.⁵

A commissioners court has no specific authority to impose a “moratorium” on a solar facility.

The authority vested in Texas counties and commissioners courts is limited to that which is expressly granted by state law or necessarily implied from express powers. *State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003). We find no statute specifically authorizing a county commissioners court to impose a “moratorium” on a solar facility.

³A moratorium typically refers to the temporary suspension of an existing licensing, permitting, or approval process. *See, e.g.*, TEX. LOC. GOV’T CODE § 212.134(c) (relating to a city’s authority to impose a moratorium on property development and providing “[d]uring the period of the temporary moratorium, a municipality may stop accepting permits, authorizations, and approvals necessary for the subdivision of, site planning of, or construction on real property”). You do not specify what type of County license, permit, or approval systems are currently in place and would be suspended by this moratorium. *See generally* Request Letter and Attachment; *see also, e.g.*, TEX. LOC. GOV’T CODE §§ 231.001–283 (giving some counties zoning authority), 232.001–158 (providing for county subdivision regulations). With some exceptions, county licenses, permits, or approval systems in relation to land use are enforced at the county level, not by this Office. *See, e.g.*, TEX. LOC. GOV’T CODE §§ 231.022 (providing for enforcement of county zoning on Padre Island), 232.005 (providing general enforcement of county subdivision regulations).

⁴*See, e.g.*, Brief from Jerry Cooper, Franklin Cnty. Comm’r, Pct. 1, to Honorable Ken Paxton, Tex. Att’y Gen. at 3 (Mar. 14, 2023) (on file with the Op. Comm.) (“I believe that our county has the specific authority granted in the Powers of County Commissioners Courts under Section 121.003 of the Texas Health and Safety Code to adopt the moratorium.”).

⁵Because an exhaustive treatment of your questions is beyond the scope of an Attorney General opinion, we do not address general matters referenced in the document you sent such as a solar facility’s impact on soil, biological habitat, aquatic environments, wetland areas, and indigenous cultural resources. *See* Attachment at 3. However, we note that the Eighty-eighth Legislature passed legislation requiring the Texas Commission on Environmental Quality to “conduct a study on the current and potential effects of the installation, operation, removal, and disposal of solar, wind turbine, and energy storage equipment on the environment and watersheds.” Act of May 29, 2023, 88th Leg., R.S., S.B. 1290, ch. 1095, § 2, 2023 Tex. Sess. Law Serv.

Specified provisions of the Transportation Code give a commissioners court authority over certain aspects of county roads.

Instead, as we previously noted, you refer us to various provisions in chapter 251 of the Transportation Code as authorizing the moratorium. *See* Attachment at 2, 4–5. Specifically, you raise sections 251.003, 251.016, 251.151, 251.152, and 251.153. *See id.*; *see also* TEX. TRANSP. CODE §§ 251.001–.161 (comprising chapter 251, titled “General County Authority Relating to Roads and Bridges”). We briefly summarize each of those provisions.

Section 251.003 vests the commissioners court with the authority to “make and enforce all necessary rules and orders for the construction and maintenance of public roads[.]”⁶ TEX. TRANSP. CODE § 251.003(a)(1). For instance, a previous opinion of this office concluded this section authorizes “a commissioners court to require permits for the construction within the county right-of-way of access points to county roads.” Tex. Att’y Gen. Op. No. GA-1013 (2013) at 4.

Section 251.016 authorizes a commissioners court of a county to “exercise general control over all roads, highways, and bridges in the county.” TEX. TRANSP. CODE § 251.016. In *City of San Antonio v. City of Boerne*, the Texas Supreme Court examined the meaning of “general control” in section 251.016’s predecessor statute and held that the Legislature intended to limit a commissioners court’s authority under the section to matters relating to public travel. 111 S.W.3d at 29–30 (stating that “[a] commissioners court’s actions are thus sanctioned under [the predecessor statute] only if related to its duty to protect the public’s interest in transportation”).

Sections 251.151, 251.152, and 251.153 are all located in chapter 251, subchapter E, titled “County Traffic Regulations.” TEX. TRANSP. CODE §§ 251.151–.161. Section 251.151 authorizes “[t]he commissioners court of a county [to] regulate traffic on a county road or on real property owned by the county that is under the jurisdiction of the commissioners court” and section 251.152 requires a public hearing before the commissioners court issues a traffic regulation under subchapter E. *Id.* §§ 251.151(a), .152(a); *see also R.R. Comm’n v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 632 n.16 (Tex. 2011) (citing section 251.151 as an example of a state law that grants an entity “express statutory authority over the regulation of traffic-related concerns”). For instance, a previous opinion of this office concluded that “the installation of stop signs on a county road is a ‘traffic regulation’ within section 251.152’s plain meaning.” Tex. Att’y Gen. Op. No. GA-0129 (2003) at 3. Section 251.153 authorizes a commissioners court to “establish load limits for any county road or bridge” with the concurrence of the Texas Department of Transportation as prescribed by Transportation Code section 621.301. TEX. TRANSP. CODE §§ 251.153(a), 621.301(a); *see also* Tex. Att’y Gen. Op. No. GA-0088 (2003) at 2 (discussing county authority to regulate overweight trucks).

In addition to the provisions in chapter 251, the resolution adopting the moratorium appears to refer to Transportation Code section 623.018. *See* Attachment at 3 (providing the moratorium will allow the County to “[c]reate standardized bonds to ensure that commercial, utility scale solar energy facilities which intend to utilize the public roadways of [the County] for repetitive hauling

⁶For purposes of chapter 251, a “public road” is a “public road or highway that has been laid out and established according to law and that has not been discontinued” TEX. TRANSP. CODE § 251.002.

pursuant to development, construction and operation of [facilities] reimburse Franklin County for the cost of repairs to County roads”); TEX. TRANSP. CODE § 623.018. Section 623.018 provides for a ninety-day temporary permit issued by the county judge for the movement of overweight or oversize objects or vehicles.⁷ TEX. TRANSP. CODE § 623.018(a)–(b). In association with that permit, the commissioners court has the option of requiring a bond to protect the county roads. *Id.* § 623.018(e) (authorizing “[t]he commissioners court [to] require a bond to be executed by an applicant in an amount sufficient to guarantee the payment of any damage to a road or bridge sustained as a consequence of the transportation authorized by the permit”).

Collectively, these Transportation Code provisions give a commissioners court substantial authority over county roads with respect to construction and maintenance, public travel, traffic regulations, load limits, and overweight vehicles. And those constructing and operating a solar facility, like any other user of a county road, must comply with such valid county road regulations.⁸ But to the extent the proposed moratorium is adopted pursuant to the referenced Transportation Code provisions and is meant to reach activity other than that related to the use of county roads, a court would likely find that it exceeds the commissioners court’s authority and is thus invalid and unenforceable.

Health and Safety Code section 121.003 authorizes a commissioners court to enforce laws reasonably necessary to protect the public health.

We next consider Health and Safety Code section 121.003, which provides in relevant part that “the commissioners court of a county may *enforce* any law that is reasonably necessary to protect the public health.” TEX. HEALTH & SAFETY CODE § 121.003(a) (emphasis added). In other contexts, Texas courts examining the term “enforce” confine it to mean executing, effectuating, or compelling obedience to an existing law. *See, e.g., San Antonio River Auth. v. Austin Bridge & Rd., L.P.*, 601 S.W.3d 616, 625 (Tex. 2020) (quoting the American Heritage Dictionary for the proposition that enforce means to “compel observance of or obedience to”); *Sheppard v. Thomas*, 101 S.W.3d 577, 582 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) (quoting Black’s Law Dictionary for the proposition that “‘enforce’ means ‘to give force or effect to (a law, etc.); to compel obedience to’”). As demonstrated in Transportation Code subsection 251.003(a), when the Legislature intends to vest counties with the authority to both enact and enforce rules and orders, it knows how to do so. *See* TEX. TRANSP. CODE § 251.003(a)(1) (vesting the commissioners court with the authority to “make and enforce all necessary rules and orders for the construction and maintenance of public roads”); *see also PPG Indus., Inc. v. JMB/Houston Ctrs. Partners Ltd.*, 146

⁷Previous opinions of this office discuss the limitations on a county’s authority to require such a permit when a vehicle is operating under a permit from the Texas Department of Transportation. *See, e.g.,* Tex. Att’y Gen. Op. No. GA-0509 (2007) at 2 (concluding that “counties are prohibited from requiring an operator of an overweight vehicle to obtain a permit from the county when the operator has obtained a permit from the” Texas Department of Transportation); *see also* TEX. TRANSP. CODE § 623.018(d)(1).

⁸*See* Brief from Stephen D. Journeay, Comm’n Couns., Pub. Util. Comm., to Honorable Ken Paxton, Tex. Att’y Gen. at 3–4 (Mar. 24, 2023) (on file with the Op. Comm.) (concluding that the “County does not have authority to adopt its resolution or moratorium to the extent that it prohibits the construction and operation of a solar-energy facility for which the Commission has granted a certificate of convenience and necessity” but acknowledging that “even a holder of a certificate for a solar-energy facility must comply with traffic rules, weight limits, or other similar use-of-road rules”).

S.W.3d 79, 84 (Tex. 2004) (noting that “[a] statute’s silence can be significant” and that an analysis begins with the presumption that the Legislature knows how to enact what it intends). Section 121.003 evinces no such intention. Thus, to the extent the proposed moratorium is adopted pursuant to section 121.003 but does not seek to enforce a specific, preexisting public health law, a court would likely find it invalid and unenforceable.

In conclusion, a county commissioners court undoubtedly possesses certain authority that could impact a particular solar facility. But we are unaware of, and you do not point us to, any state law granting a commissioners court authority to adopt a moratorium that fully encompasses the “siting, construction, installation, operation, permitting, and licensing” of a solar facility. To the extent the proposed moratorium here is based on the referenced Transportation Code provisions or Health and Safety Code section 121.003, a court would likely find it to be beyond the scope of the commissioners court’s authority and unenforceable.

S U M M A R Y

Specified provisions of the Transportation Code give a commissioners court authority over certain aspects of county roads. To the extent a moratorium proposed by a county in relation to a commercial utility-scale solar-energy facility is adopted pursuant to such authority but is meant to reach activity other than that related to county roads, a court would likely find it invalid and unenforceable.

Health and Safety Code section 121.003 authorizes the commissioners court of a county to enforce laws reasonably necessary to protect the public health. To the extent a moratorium proposed by a county in relation to a commercial utility-scale solar-energy facility is adopted pursuant to section 121.003 but does not seek to enforce a specific, preexisting public health law, a court would likely find it invalid and unenforceable.

Very truly yours,

A handwritten signature in black ink that reads "Angela Colmenero". The signature is written in a cursive, flowing style.

ANGELA COLMENERO
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