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The "Rule" of Coordination
And the Power it brings to Texans

Texan's now have a way to fight state agencies like the Texas Department of Transportation over the Trans-Texas Corridor and other toll roads by forcing the agency to comply with the "coordination" requirement found in both state and federal statutes.

This paper discusses the two methods available in Texas:

- The state approach using Local Government Code 391; and
- The application of federal statutes mandating "coordination" between local government and federal agencies.

The "Rule" of Coordination was developed by Fred Kelly Grant, an attorney from Nampa, Idaho. Fred has practiced law for nearly 50 years and has worked with all levels and branches of government. He clerked for the Chief Judge in the Maryland Court of Appeals and for Judge Lodge in the Idaho Supreme Court. Earlier in his career, Fred served as an Assistant United States Attorney in the District of Maryland and later became Chief of the Organized Crime Unit for the State's Attorney in Baltimore.

TEXAS LOCAL GOVERNMENT CODE 391

Enacted in 1965, by the 59th Legislature and amended most recently in 2001, Texas has an exceptionally strong state statute dealing with coordinating local units of government with state agencies found **under Local Government Code, Chapter 391, Regional Planning Commissions**. Under this statute, at least two or more cities or counties or a combination of a city and a county can form a regional commission to work together to develop plans for their local region and force state agencies to coordinate with their activities.

In fact, the code encourages local units of government to "join and cooperate to improve the health, safety, and general welfare of their residents and plan for future development of communities, areas, and regions" for nearly any activity, including transportation.

Section 391.001(b) states:

"The general purpose of a commission is to make studies and plans to guide the unified, far-reaching development of a region, eliminate duplication, and promote economy and efficiency in the coordinated development of a region."

Section 391.009(c), further states:

"In carrying out their planning and program development responsibilities, state agencies shall, to the greatest extent feasible, coordinate planning with commissions to ensure effective and orderly implementation of state programs at the regional level."

Section 391.009(c) is the lynchpin that gives local units of government the ability to force state agencies to work with and coordinate all state plans with their local regional commission.

Although the state statute does not define the term "coordinate," in Empire Ins. Co. of Texas v. Cooper 138 S.W. 2d 159 (Court of Civil Appeals of Texas, 1940), the court defined "coordinate" to mean "equal, of the same order, rank, degree or importance; not subordinate." That definition helps clarifies the position local governments can take under this statute. When local governments, through a commission, demand coordination with a state agency, they are placed on an equal rank of importance and are not subordinate to any state agency. That is a very powerful position.

An example of a "coordinating" commission has already been formed in Texas in Bell County. The cities of Bartlett, Little River-Academy, Holland, and Rogers created the Eastern Central Texas Sub-Regional Planning Commission (ECTSRPC) by merely adopting a city ordinance invoking Chapter 391. They have notified TxDoT of their purpose and by statute, TxDoT is required to coordinate all studies, plans, and management activities for the Trans-Texas Corridor with the ECTSRPC and the four respective cities or face the risk of being taken to court to obey state law.

The commission, by statute, is considered a "political subdivision of the state." Once formed, other units of government such as counties, municipalities, authorities, districts (school and water) can join expanding the jurisdictional boundaries of a regional commission. Regional commissions have no taxing authority and the governing body must consist of two-thirds elected officials from cities or counties.

Creating a local regional commission and demanding coordination is an excellent way for local governments to force state agencies to the table to deal with each other on a government-to-government basis. Without this ability, most local governments will be browbeaten into submission by state agencies that have become difficult, if not impossible, to work with.

Texas state agencies have never had to deal with local commissions in this manner and are certain to try to ignore or intimidate any government that invokes this process. However, the federal courts have made it clear under the federal statutes discussed below, that if federal agencies do not coordinate with local governments, they will be ordered by the court to do so. Texans now have a law that can create the same scenario forcing state agencies to the table.

FEDERAL STATUTES AND STRATEGY

A second strategy can be implemented independently of forming a commission. This option is found within several federal statutes. The following discusses federal statutes that allow ***any*** local government at any time to demand federal agencies coordinate plans they are implementing in the local community.

For more than 30 years, the federal government has steadily increased its power and authority through statutes and regulations forcing local communities to comply. These regulations affect nearly every acre and use of land in America.

Some of the federal regulatory laws enacted by Congress include the National Forest Management Act, Endangered Species Act, Clean Water Act, Clean Air Act, the Wild and Scenic Rivers Act, the National Preservation Act, Soil Conservation district statutes, and the National Environmental Policy Act (NEPA).

NEPA is one federal law that can be utilized by any local government as a hook to force the Environmental Protection Agency to coordinate with them on environmental impact statements. It especially can be used in transportation issues where environmental studies are performed to build highways like the Trans-Texas Corridor or even toll roads.

In the example above, the four cities also utilized NEPA by sending a demand letter to the Environmental Protection Agency requesting they reject the Draft Environmental Impact Study performed by TxDoT for the TTC-35 because they failed to coordinate their study with each independent city as required by 42 USC 4321 resulting in a grossly insufficient DEIS. Region 6 EPA has already responded to the cities request.

By statute, the EPA can reject the DEIS and require the process to begin again, this time coordinating with every city, school district, water district and county that makes this request. Remember, this type of action does not require a commission, but can be sent by any city, county, school district, or water district.

Any county, city, school district or water district that will be impacted by the Trans-Texas Corridor or any toll road can make the same request of the EPA using the documents submitted by the four originating cities. These documents can be acquired by calling the American Land Foundation office at 512-365-2699 or on the web at www.Stewards.us.

The more TxDoT and agencies like the EPA are required to coordinate with local units of government, the more we will learn about their plans and local communities will have more opportunity to have significant input into the process.

COORDINATION UNDER OTHER FEDERAL STATUTES

Years of political pressure has converted the land and management agencies like the Department of Interior and Environmental Protection Agency from their original

purpose of managing our natural resources for the betterment of the nation to one of strict regulatory enforcement causing financial burdens upon citizens, businesses, and local governments. Landowners and communities have tried to influence agency decisions by reason and through lobbying Congress, but most of these attempts have been in vain while regulatory powers have grown exponentially. And, our elected officials at the state and federal levels no longer represent our views and continue to ignore our pleas.

Local governments have felt powerless as they watch the state and federal agencies control their citizen's property rights, force expensive taxes and fees upon landowners and homeowners, and place unfunded mandates on their communities that ultimately facilitate the diversion of programs and dollars weakening, if not destroying, local economies and social structures.

City and county officials have the responsibility to protect the local tax base, value of private property, economic stability associated with natural resource and agricultural production, the well-being of the school system and, in general, the well-being of the local community. These critical functions are being controlled by and entangled with federal and state agency management decisions.

Specific language within the regulatory-type laws passed by Congress includes some form of the directive to "coordinate" all planning and management activities with local governments. And, it has not been by chance. Congress recognized the importance of giving **all** local governments the ability to have input into federal activities as a means for them to protect their citizens.

COORDINATION DEFINED

The term "Coordination" was initially defined by Congress in the Federal Land Policy Management Act, (FLPMA) at 43 USC 1712. This act directs the Bureau of Land Management to coordinate its "land use inventory, planning, and management actions…with any local government…" Although this act is specific to federal lands, it is where Congress expressly defined what "coordination" means and every federal act dealing with resource management and land-use enacted over the last 35 years has incorporated similar language of coordination with local governments.

All the local governments have to do is formally invoke the congressional edict to "coordinate" and federal agencies have no choice but to comply. Fred Grant merely adapted the "coordination" process 15 years ago for Owyhee County, Idaho and Modoc County, California to help local government protect the local economies and livelihoods of their citizens. To date, they have not lost one battle with one federal agency.

This is not an attempt to gain supremacy over federal agencies or an attempt to become a "cooperative agency," which lowers the local government to agency status. Neither does it empower the local government with new authority. Rather, it is the means by which local government can assert their authority, working government-to-government with the federal agencies through coordination.

Once "coordination" is invoked, federal agencies are required to coordinate their plans and management activities with local government. They are also required to give prior notice to the local government of all agency plans and management activities before notice is given to the general public and must be given prior to implementation.

The most important aspect of coordination is the requirement of federal agencies to make every practicable effort to make their policies and management activities consistent with local positions and plans. The burden to comply is on the federal agencies. If consistency cannot be achieved, local governments can request a remedy through court-ordered compliance.

UNDERSTANDING COORDINATION MEANS POWER

Federal agencies often resist efforts at coordination and would prefer local government believe they have no real power or seat at the table except to hear what the managers have decided. But this is not what Congress mandated. Local governments, which understand the "rule" of coordination, are in an important position to insist that their community not become endangered by federal and state regulations.

When local governments require federal agencies to coordinate with them, they are simply requiring the agency to follow federal law. Failure on the part of the agency to coordinate means it is breaking the law and there have been numerous federal lawsuits adjudicating this exact issue, and in all cases, local governments have succeeded.

Using the congressional and legislated mandate of "coordination" is a way to bring the decision-making process back to the local level. It is a way that citizens can have meaningful input in local decisions ensuring the policies pursued by the federal and state agencies respect all the elements of private property and individual liberty that ensure a strong community.

Where local governments and active citizens have properly implemented a coordination strategy and diligently insisted on agency compliance, they have had tremendous successes protecting their land, resources and livelihoods for their citizens.

"Coordination" unleashes the constitutional power local government has always had, but until now, has never been taught how to use.

For more information, please contact the American Land Foundation at 512-365-2699 or Stewards of the Range at 512-365-8038. Documents and more information can be found at www.Stewards.us under "Strategies."