

COORDINATION WORKS

A GUIDE FOR LOCAL
ELECTED OFFICIALS IN TEXAS



FORMING A 391 COMMISSION

RESTORE LOCAL CONTROL

In Texas, counties, cities, and special districts can form a 391 Commission to compel State agencies to “coordinate” to protect their local community from government overreach.

AMERICAN
STEWARDS
of Liberty

SUMMARY

HOW TO FORM 391 COMMISSIONS

- 1. Identify two counties, a city and a county or two cities that are within the same COG region and are facing similar problems working with state agencies.**
2. Each entity must pass a resolution authorizing the formation of the new sub-regional planning commission.
3. Hold first commission meeting where the new entity adopts by-laws, considers inviting additional members, and discusses the steps to initiate coordination with state agencies.
4. Adopt Commission's plans and policies.
5. Set first coordination meeting(s) and send request letters to the agencies.
6. Prepare issues to be discussed and publish meeting agenda.
7. Meet with agencies to coordinate and move forward with the actions necessary to protect the health, safety, and welfare of the people.

WHAT IS "COORDINATION?"

The purpose of coordination is to achieve consistent policies and plans across all levels of government.

At the Federal level, Congress placed the burden of working to reach consistency on the Federal agencies. The Texas State code places the burden to harmonize polices on the State agencies. There are unique nuances as to what each agency is required to do based on the specific laws they implement. Nevertheless, the end goal remains the same: to harmonize the plans, objectives and policies across all levels of government.

"Coordinate" and "coordination" refer to government-to-government oral and written communications between the authorized representatives of an agency and the elected officials of a local government that are intended, in good faith, to identify, consider and resolve issues and concerns of a local government, including conflicts with plans, policies, and programs.

The Texas courts defined what "coordinate" means in *Empire Ins. Co. of Texas v. Cooper*, (138 S.W. 2nd 159 (TEX. CIV. APP. 1940)) stating "*Co-ordinate' means equal, of the same order, rank, degree or importance; not subordinate.*"

AUTHORITY

The Texas Local Government Code provides in section 391, the authorization for local governments within the same Council of Government (COGs) or regions to join together and form a sub-regional planning commission, for the purpose of protecting the health, safety and welfare of the people. This creates a formal process for the local governments to work together on issues that impact their region and develop plans and polices for how these can be jointly carried out. Importantly, one of the primary purposes the Code grants to planning commissions is its' ability to demand state agencies coordinate to the greatest extent feasible.

TEXAS LOCAL GOVERNMENT CODE 391

- 1. 391 Commissions** – Texas Local Government Code, Section 391, authorizes local governments within the same Council of Government (COGs) to join together to form a sub-regional planning commission.
- 2. State Agencies Required to Coordinate** – Local Government Code 391.009(c) 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.”
- 3. State District Court Rules on 391.009(c)** – On January 5, 2017, the District Court of Travis County ruled in *Waller County Sub-Regional Planning Commission v. Texas Department of Transportation*, the Department had a duty to coordinate planning with Waller County Sub-Regional Planning Commission “to the greatest extent.” (Page 5)
- 4. Purpose for 391 Commissions** – To “encourage and permit” local government units to:
(1) join and cooperate to improve the health, safety, and general welfare of their residents; and (2) plan for the future development of communities, areas, and regions.” (Texas Local Government Code 391.0001(a))

Carried out through the development of plans coordinated with the state agencies:

“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.” (391.0001(b))

PROCESS

1. How to form Planning Commission –

By a joint resolution of two counties, two cities, or a county and a city within the same COG. Each unit of government appoints a representative, who will represent that government as a voting member at a regular or special meeting. The 391 commission members then hold their first meeting to formally organize by adopting by-laws and electing a Chairman and Vice Chairman. Two-thirds of the voting members must be elected officials. Additionally, a provision added to the code in 2011, requires the commission invite a member of the state legislature, who represents a district located wholly or partly in the region as ex-officio, non-voting member of the governing body.

2. Commissions Create Plans and Policies -

Commission adopts, by resolution, plans, policies, and priorities to be coordinated with state agencies and carried out across the commission's sub-region. Can be simple resolutions identifying the policies or larger, comprehensive planning documents. Additionally, the commission can adopt a plan already authorized by one of its members.

3. Meeting Process for Commissions -

Commissions are political subdivisions of the state subject to the Texas Open Meetings Act. All meetings are open to the public and require a 72-hour advance notice of the meeting, location, and agenda. Meetings are run by the Chairman, formally recorded through minutes and other appropriate records. Meetings are government-to-government, with the discussion limited between the

commission and the state agency (agencies) with no public comment, but it allows citizens to hear the entire discussion. Citizens can bring concerns to the next regular commission meeting.

4. Issues Addressed – All issues relating to the health, safety and welfare of the citizens can be addressed through the commission.

5. Resources to Operate – No additional resources are required. Local governments have staff who publish notices and record meetings. Individuals such as Sheriffs, school and fire district members can be utilized, as well as, any expert on a subject matter and/or can hire staff and consultants. It can collect funds and grants for plans.

The commission is required to submit an annual audit and report to the governor, the state auditor, the comptroller, and the Legislative Budget Board. The report is to include the amount of funds collected and expended (if any), a summary of activities (usually the commissions minutes) and projected plans for the coming year.

6. Commissions Can Coordinate with Federal Agencies –

When there is a "federal connection" i.e., a federal agency provides funds, approves the project, or when the statute governing the federal action requires them to coordinate with local governments.

HISTORY

American Stewards of Liberty discovered that Texas had a “coordination” requirement in state law similar to that found in federal statutes in 2007, when researching strategies to stop the Trans-Texas Corridor. The organization has been working with local governments across the nation since the early 1990’s, helping them implement the “coordination” process for a variety of issues. The requirement of federal and state agencies to coordinate with local governments is found in numerous federal and state statutes. *American Stewards* has trained hundreds of local governments on how to implement the process and helps the entities advocate their position as they work to a successful conclusion.

391 COMMISSIONS IN TEXAS

The first 391 sub-regional planning commission was formed in August 2007. The Eastern Central Texas Sub-Regional Planning Commission located in Bell County, Texas was created to require the Texas Department of Transportation (TXDOT) to coordinate the Trans-Texas Corridor, a quarter-mile wide international toll road designed to connect the Chinese seaports in Mexico to Canada. Several other commissions were then formed along the route of the planned highway. This Commission is credited with stopping the international highway through the coordination process.

In 2009, Mason County and City of Mason formed a commission to stop a CREZ power line. When the Commission was formed, the preferred route for the line was through Mason County. After a series of coordination meetings with state and federal agencies, the route selected went around Mason County as the Administrative Court removed the Mason County route for environmental concerns – the issues raised by the Commission.

In 2016, Waller County formed a commission to fight the High Speed Rail between Dallas and Houston. Waller County brought the successful lawsuit (mentioned earlier) in District Court requiring TXDOT to coordinate in 2017.

In 2021, Kinney and Uvalde County and the City of Uvalde formed the Texas Border Sub-Regional Planning Commission to protect their citizens from the invasion of illegal aliens pouring into their communities. They’ve held one meeting with the Texas Department of Emergency Management in late 2021 and since have received increased support primarily from the Governor’s office.

COPY

Filed in The District Court of Travis County, Texas

JAN 05 2017 NNR

At 11:53a M. Velva L. Price, District Clerk IN THE DISTRICT COURT

CAUSE NO. D-1-GN-16-005374

WALLER COUNTY SUB-REGIONAL PLANNING COMMISSION, Plaintiff,

v.

JAMES M. BASS, in his official capacity as Executive Director of the TEXAS DEPARTMENT OF TRANSPORTATION, Defendant.

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

On January 5, 2017, came on to be heard Plaintiff Waller County Sub-Regional Planning Commission's Motion for Summary Judgment. The Court, having read and examined Plaintiff's Motion for Partial Summary Judgment, the responses, the evidence, the pleadings, and the arguments of counsel, is of the opinion that the Motion for Partial Summary Judgment should be GRANTED, and that a partial summary judgment should be entered in favor of Plaintiff. Therefore,

IT IS ORDERED that Plaintiff's Motion for Partial Summary Judgment be and is hereby GRANTED.

IT IS FURTHER ORDERED that Plaintiff is entitled to judgment declaring that the Texas Department of Transportation has a duty to coordinate planning with the Waller County Sub-Regional Planning Commission with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas and that Defendant James M. Bass, in his official capacity as executive director of the Texas Department of Transportation, has acted outside his powers and authority by refusing to direct the Texas Department of Transportation to perform its statutory duty to coordinate planning with the Waller County Sub-Regional Planning

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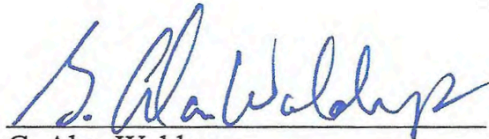
Commission, with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas, ^(k) prior to the release of the Draft Environmental Impact Statement.

SIGNED this 5th day of January, 2017



TRAVIS COUNTY DISTRICT JUDGE

AGREED AS TO FORM:



G. Alan Waldrop
State Bar No. 20685700
Paul M. Terrill, III
TERRILL & WALDROP
810 W. 10th Street
Austin, Texas 78701

ATTORNEY FOR PLAINTIFF



Thornton O. Wood
State Bar No. 24028137
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548

ATTORNEY FOR DEFENDANT

ASL

BACKGROUND

American Stewards of Liberty (ASL) is a 501(c)(3) non-profit educational organization incorporated in Texas working to protect private property rights and the liberties they secure. We are currently in our 32nd year of operation.

ASL challenges the policies that seek to undermine American's ability to produce the food, fiber, energy, and minerals our nation needs. From defeating the Trans-Texas Corridor, developing the local government coordination strategy, proactively delisting species that do not warrant federal protection, to actively confronting the 30x30 international program and stopping the creation of Natural Asset Companies on the New York Stock Exchange — ASL challenges the radical environmental movement, which believes the administrative state, not individuals, should determine how Americans use their land.

ASL provides expertise and assistance to counties and municipalities in forming, strategizing, and advising 391 Sub-Regional Planning Commissions defined in the Texas Local Government Code.



We publish the online news service, *Liberty Matters*, available free to the public, and the members only quarterly journal, *Standing Ground*.

For more information on ASL and coordination go to www.americanstewards.us

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 P.O. Box 801, Georgetown, TX 79627 512-591-7843
Join online at: www.americanstewards.us
 ASL is a 501(c)(3) organization. Contributions are tax-deductible minus the cost of goods received.

MEMBERSHIP LEVELS & BENEFITS

American Steward - \$25

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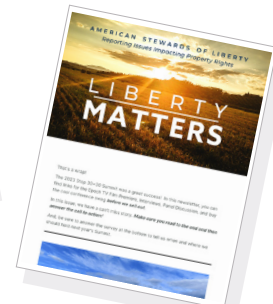
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All Perks of Executive Council **PLUS**
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American Stewards of Liberty is a non-profit organization whose mission is to restore property rights and the liberties they secure by defending the use of our land, and restoring local control. American Stewards challenges the policies seeking to undermine the ability to produce the food, fiber, energy, and minerals our nation needs, and works to bring these into alignment with full Constitutional protections.

Founded in 1992, American Stewards is a 501(c)(3) non-profit educational organization. We are supported through annual memberships, donations and program work with local governments.

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