



## Analysis of Prop 1/7 AG Opinion\*

(Tex. Att'y Gen. Op. No. KP-0197 (2018))

- The Opinion request related to the use of Prop 1/7 funds and questioned whether those funds can be used on toll projects.
- The Opinion states that Prop 1/7 funds cannot be placed into a general fund for “a partially tolled project” without a mechanism for ensuring that Prop 1/7 funds are spent as constitutionally required—e.g., only on non-tolled roads.
  - ✓ This indicates that funds *can* be deposited to a fund for “a partially tolled project” *if* there is a means to ensure that none of the funds are spent on the tolled portion of the project.
  - ✓ The Opinion acknowledges that the Texas Transportation Commission (“TTC”) can provide “separate tracking for all the non-tolled elements” and that it is able to “account for that separately and demonstrate to the public that [it is] not using any Prop 1 of 7... money for a toll project” (referring to comments from Chairman Bugg in relation to the US 183 North project-Oct. 2017 TTC meeting).
  - ✓ Thus, the Opinion recognizes that Prop 1/7 funds can be used for non-tolled roads that are part of a partially tolled project and that the TTC has the ability to institute accounting mechanisms to ensure that Prop 1/7 funds are used only for permissible purposes.
- The Opinion notes that the Prop 1/7 prohibition relates to spending money on “toll roads”, and that the phrase “toll road” is not defined in statute or caselaw.
  - ✓ As a result the AG’s office is unable to determine whether a court would allow Prop 1/7 funds to be used for “toll projects” (which presumably contain tolled and non-tolled elements) when the constitutional language only refers to a prohibition related to “toll roads”.
- **Summary: Based on the foregoing, it appears that:**
  - ✓ as long as the TTC maintains proper accounting mechanisms to separately track and account for Prop 1/7 funds, those funds can be spent on a non-tolled road that is located in the same corridor as a toll road.
  - ✓ the phrase “toll road” will need to be defined in statute or caselaw to determine whether there are non-tolled portions of a toll project for which Prop 1/7 funds can be spent.

\* For questions or additional information, contact C. Brian Cassidy at [bcassidy@lockelord.com](mailto:bcassidy@lockelord.com), Brian O'Reilly at [boreilly@lockelord.com](mailto:boreilly@lockelord.com), or Sarah Lacy at [Sarah.Lacy@lockelord.com](mailto:Sarah.Lacy@lockelord.com).