



**Office of the Attorney General
State of Texas**

September 28, 1992

DAN MORALES
ATTORNEY GENERAL

Honorable Ken Oden
Travis County Attorney
County Courthouse
P. O. Box 1748
Austin, Texas 78767

Letter Opinion No. 92-56

Re: Applicability of Attorney General
Opinion JM-1069 (1989) to type A
general-law municipalities (ID# 17138)

Dear Mr. Oden:

You ask whether Attorney General Opinion JM-1069 (1989), which dealt with a question about zoning boards of adjustment established by home-rule municipalities under chapter 211 of the Local Government Code, applies to type A general-law municipalities as well. See Local Gov't Code § 5.001 (defining "type A general-law municipality"). You suggest that it does. We agree.

Attorney General Opinion JM-1069 stated that, while cities are not expressly required by the applicable statute, Local Government Code section 211.008, to appoint a board of adjustment, case law indicated that a city attempting to establish a comprehensive zoning plan could be mandamus-ed to establish a board of adjustment. The conclusion of the opinion was that the governing body of a municipality could not serve as, nor any of its members serve on, the municipality's board of adjustment.

Although Attorney General Opinion JM-1069 was responding to a question relative to home-rule municipalities, the body and conclusion of that opinion spoke of municipalities generally. Similarly, Local Government Code section 211.008, which provides for the establishment of boards of adjustment, and which was construed in Attorney General Opinion JM-1069, applies to all municipalities. Upon reviewing Attorney General Opinion JM-1069 and applicable law, we find nothing indicating its statements and conclusions regarding municipal boards of adjustment do not apply to those of type A general-law municipalities as well.

S U M M A R Y

Attorney General Opinion JM-1069 (1989), which stated that a municipality was not statutorily required, but could, if it attempted to establish a comprehensive zoning plan, be mandamusd to establish a board of adjustment, and which concluded that neither the governing body of the municipality nor any of its members could serve as or on such board of adjustment, applies to type A general-law municipalities as well.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a long, sweeping underline.

William Walker
Assistant Attorney General
Opinion Committee