



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

DAN MORALES
ATTORNEY GENERAL

March 29, 1994

Honorable Wilhelmina Delco
Chair
Committee on General Investigating
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 94-033

Re: Whether, under section 42.021 of the
Local Government Code, a home-rule city
may measure its extraterritorial jurisdiction
using a map (RQ-666)

Dear Representative Delco:

You have inquired about the method a home-rule municipality must use to measure its extraterritorial jurisdiction. Specifically, you ask whether a home-rule municipality may measure its extraterritorial jurisdiction by drawing a radius around the municipality on a map, or whether the municipality must "go into the field, . . . physically [measuring] the . . . radius."

To promote and protect the general health, safety, and welfare of persons residing in and adjacent to municipalities, the legislature has declared it the policy of this state to designate certain areas as the extraterritorial jurisdiction of municipalities. Local Gov't Code § 42.001. *See generally* 6A J. JEFFREY REINHOLTZ & MYRON W. WASIUNEC, THE LAW OF MUNICIPAL CORPORATIONS § 24.57, at 169 (3d ed. 1988). The legislature further has provided that

[t]he extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

- (1) within one-half mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants;
- (2) within one mile of those boundaries, in the case of a municipality with 5,000 to 24,999 inhabitants;
- (3) within two miles of those boundaries, in the case of a municipality with 25,000 to 49,999 inhabitants;
- (4) within 3½ miles of those boundaries, in the case of a municipality with 50,000 to 99,999 inhabitants; or
- (5) within five miles of those boundaries, in the case of a municipality with 100,000 or more inhabitants.

Local Gov't Code § 42.021. *See generally* Attorney General Opinion C-459 (1965) (discussing legislative history of V.T.C.S. art. 970a, statutory predecessor to Local Gov't Code § 42.021). Section 42.021 of the Local Government Code applies to both home-rule and general-law municipalities. Because you refer particularly to a home-rule municipality with an extraterritorial jurisdiction of five miles, we assume you are referring to a municipality with 100,000 or more inhabitants.

No statutory provision indicates the method a municipality must use to determine the boundaries of its extraterritorial jurisdiction. Nor have we found any judicial decision or attorney general opinion discussing the issue. In our opinion, therefore, a municipality may choose the method by which it will ascertain the boundaries of its extraterritorial jurisdiction.

S U M M A R Y

A municipality may choose the method by which it will ascertain the boundaries of its extraterritorial jurisdiction, determined in compliance with section 42.021 of the Local Government Code.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee