



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

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ATTORNEY GENERAL

August 16, 1996

The Honorable Fred Hill
Chair, Committee on Urban Affairs
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-087

Re: Whether a general-law municipality that disannexes territory within three years of the original annexation may discontinue water and sewer service to the disannexed territory in accordance with Local Government Code 43.033(b) or in accordance with Water Code section 13.250(b) (ID# 38803)

Dear Representative Hill:

Local Government Code section 43.033(b) authorizes a general-law municipality, within one to three years after annexing an area, to disannex the area and to discontinue water and sewer service to the area. By contrast, Water Code section 13.250(b) authorizes a certificated municipality that provides water and sewer service to discontinue service to all or part of a service area only for nonpayment or nonuse. If a general-law municipality that has been granted a certificate of public convenience and necessity disannexes an area more than one year but less than three years after annexing the area, may the municipality discontinue water and sewer service to the disannexed area in accordance with Local Government Code section 43.033(b)? We conclude that it may; we further conclude that section 13.250(b) of the Water Code does not apply in this situation.

You indicate that the municipality of Parker has annexed territory under Local Government Code section 43.033(a). The Parker water system serves all of the territory you describe. Additionally, all of the annexed territory is within an area covered by Parker's certificate of public convenience and necessity, which the Texas Natural Resources and Conservation Commission has issued under Water Code chapter 13, subchapter G. You further state that a majority of the landowners in the territory annexed by Parker voted to disannex under Local Government Code section 43.033(b). Following disannexation, Parker notified landowners in the disannexed territory that, in accordance with section 43.033(b), it would discontinue water and sewer service to the area. The landowners, however, protested to the Natural Resources and Conservation Commission, which informed Parker that Water Code section 13.250(b) prohibits the municipality from discontinuing water or sewer service except for nonpayment, nonuse, or a similar reason.

You ask whether the Local Government Code or the Water Code governs Parker's plan to discontinue service to the disannexed territory.¹

We begin by discussing the two statutes about which you ask. We consider first Local Government Code section 43.033, which authorizes a general-law municipality to annex adjacent territory without the consent of the territory's landowners if certain conditions are met.² Subsection (b) provides landowners in the newly annexed territory an opportunity to opt out of the annexation:³

If, after one year but before three years from the passage of an ordinance annexing an area under this section, a majority of the landowners or registered voters in the area vote by petition submitted to the municipality for disannexation, the municipality shall immediately disannex the area. If the municipality disannexes the area under this subsection, the municipality may discontinue providing the area with water and sewer service.

¹Your letter indicates that the municipality of Lucas may be in the same situation as Parker.

²Local Gov't Code § 43.033(a). Specifically, a general-law municipality that wishes to annex adjacent territory without the consent of the landowners in the territory must ensure that six conditions are met:

- (1) the municipality has a population of 1,000 or more and is not eligible to adopt a home-rule charter;
- (2) the procedural rules prescribed by [chapter 43] are met;
- (3) the municipality must be providing the area with water or sewer service;
- (4) the area does not include unoccupied territory in excess of one acre for each service address for water and sewer service;
- (5) the service plan requires that police and fire protection at a level consistent with protection provided within the municipality must be provided to the area within 10 days after the effective date of the annexation; and
- (6) the municipality and the affected landowners have not entered an agreement to not annex the area for a certain time period.

Id.

³Subsection (b) was added to Senate Bill 764 of the 72d Legislature on the senate floor. Debate on S.B. 764 on the Floor of the Senate, 72d Leg. (Apr. 11, 1991) (statement of Senator Bivins) (tape available from Senate Staff Services). Introducing the amendment, Senator Bivins explained that it provides residents of a newly annexed area with "due process." *Id.* Senate Bill 764's companion, House Bill 985, was amended to comport with Senate Bill 764 on the house floor. See Debate on H.B. 985 on the Floor of the House, 72d Leg. (May 17, 1991) (statement of Representative Stiles) (tape available from House Video/Audio Services).

We assume Parker is a general-law municipality and that it properly annexed and then disannexed the territory in question.

We consider next the Water Code provisions you raise. Under section 13.250(a), any retail public utility, including a municipality,⁴ that holds a certificate of public convenience and necessity must serve every consumer within the certified area, rendering "continuous and adequate service within the area." The certificate holder may discontinue service to a certified service area or part of a certified service area in five circumstances only:

1. The Texas Natural Resource Conservation Commission has certified that the discontinuance will not adversely affect the present or the future convenience and necessity.
2. The consumer or consumers has or have not paid for utility services.
3. The consumer or consumers has or have not paid for sewer services.
4. The services have not been used.
5. The municipality finds other reasons similar to numbers 2-4 "in the usual course of business."⁵

We assume that none of these five circumstances are present.

In our opinion, and based upon the information you have provided us, Local Government Code 43.033(b) permits Parker to discontinue service in this situation, and Water Code section 13.250 is inapplicable. Where a general and a special provision conflict irreconcilably, the special provision prevails as an exception to the general provision, particularly where the special provision was enacted after the general provision.⁶ We believe Water Code section 13.250(b) provides generally for a certificated municipality to discontinue service in circumstances other than a disannexation under Local Government Code section 43.033(b). On the other hand, Local Government Code section 43.033(b) provides a special exception whereby a municipality, whether the municipality is certificated or not, may discontinue service in connection with disannexation under that section. In reaching this conclusion, we note that the legislature

⁴See Water Code § 13.002(19) (defining "retail public utility").

⁵*Id.* § 13.250(b). Although we do not reach the issue, it appears from a reading of this section that most of the permissible reasons for discontinuing water or sewer service under Water Code chapter 13 contemplate discontinuing service to a single customer.

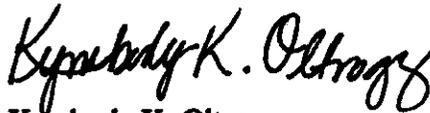
⁶Gov't Code § 311.026(b).

enacted Local Government Code section 43.033 in 1991,⁷ while it added subsection (b) to Water Code section 13.250 in 1987.⁸

S U M M A R Y

Local Government Code section 43.033(b) provides a special exception to Water Code section 13.250(b) under which a municipality, whether the municipality is certificated or not, may discontinue service in connection with disannexation under section 43.033. Consequently, a general-law municipality that disannexes territory under Local Government Code section 43.033(b) may discontinue water and sewer service to the disannexed territory as provided in section 43.033(b).

Yours very truly,



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Opinion Committee

⁷See Act of May 26, 1991, 72d Leg., R.S., ch. 904, § 1, 1991 Tex. Gen. Laws 3239, 3240.

⁸See Act of June 1, 1987, 70th Leg., R.S., ch. 539, § 16, 1987 Tex. Gen. Laws 2161, 2166-67.