

*Office of the Criminal District Attorney
Bastrop County, Texas*

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OPINION COMMITTEE

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February 11, 2004

RQ-0182-GA

Office of the Attorney General for the State of Texas
ATTN: Nancy Fuller
William P. Clements Building
P.O. Box 12548
Austin, Texas 78711

FILE # ML-43476-04
I.D. # 43494

Question: What is the deadline under §242.0015 of the Local Government Code for the completion of a certified subdivision regulation agreement between a county and a city whose extraterritorial jurisdiction (ETJ) based on population pursuant to §42.021 LGC is within one mile of its corporate boundaries, but whose ETJ under §42.022(b) LGC extends far beyond 3.5 miles from its corporate boundaries?

Dear Ms. Fuller:

Our office is in receipt of your letter dated February 6, 2004 and appreciates hearing from you. I must admit, however, that I am unable to provide the Opinions committee with much more information or perspective than that contained in our original request for opinion dated February 2, 2004 (a copy of which is enclosed). The statute under discussion, §242.0015 of the Texas Local Government Code, was enacted by the 78th Legislature and became effective June 20, 2003. The first agreement "deadline" dictated by §242.0015 is January 1, 2004 – a little over a month ago. Thus, although potential questions may have existed prior to 1/1/04, the disagreement in which we find ourselves enmeshed did not.

I find no pertinent cases dealing with Chapter 242 Tex. Loc. Gov't Code, much less addressing §242.0015 or our particular question. In Attorney General Opinion No. JC-0518, the A.G.'s Office was asked whether a county and a municipality could agree to a "hybrid" set of regulations under §242.001(d)(4) L.G.C. In responding, the opinion notes that

the unincorporated area around a municipality that is located within a certain distance of the municipality's corporate boundaries [is] known as the municipality's "extraterritorial jurisdiction." (Page 1)

The opinion proceeds to quote §42.021 Loc. Gov't. Code. Ann. (Vernon 1999) stating that the "perimeter of a particular municipality's extraterritorial jurisdiction is determined by the municipality's size." (Pages 1-2) The City of Bastrop has a population falling between 5,000 and 24,999 inhabitants which, per §42.021(2) would give the City an ETJ of one mile outside its corporate boundaries. Using the definition of ETJ utilized in this opinion, the City of Bastrop and Bastrop County would have until January 1, 2006 to come to terms on a subdivision regulation agreement. I am not, however, convinced this case provides the ultimate guidance for answering our question as the writers of this opinion (apparently) did not have to contemplate any other type of ETJ in order to answer the question posed by that request.

FURTHER: Section 242.001 is entitled "Regulation of Subdivisions in Extraterritorial Jurisdiction Generally." Subsection (a) of this section delineates the characteristics of the counties to which §242.001 does or does not apply. Subsection (b) states that a subdivision plat may not be filed with a county clerk without the requisite agreement per subsections (c) and (d) for an area "*in a municipality's extraterritorial jurisdiction, as defined by Section 212.001 . . .*"¹ Tex. Loc. Gov't. Code Chapter 212 Municipal Regulation of Subdivisions and Property Development, Subchapter A, Regulation of Subdivisions, §212.001 provides the following definition of ETJ:

"Extraterritorial jurisdiction" means a municipality's extraterritorial jurisdiction as determined *under Chapter 42*, except [for certain municipalities bordering the Rio Grande River]. (Emphasis added.)

"Under Chapter 42," extraterritorial jurisdiction is defined in both §42.021 as the statutory ETJ based on the municipality's size and §42.022 wherein it is provided that

- (a) "[w]hen a municipality annexes an area, the extraterritorial jurisdiction of the municipality expands with the annexation to comprise, consistent with Section 42.021, the area around the new municipal boundaries" and
- (b) "[t]he extraterritorial jurisdiction of a municipality may expand beyond the distance limitations imposed by Section 42.021 to include an area contiguous to the otherwise existing extraterritorial jurisdiction of the municipality if the owners of the area request the expansion."

Chapter 212 is referenced at other locations in §242.001 as well.

¹ Tex. Loc. Gov't. Code §1.003 "Internal References" provides in part that "a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; . . ."

Because we could use the 01/01/2006 deadline, I would prefer the City of Bastrop's ETJ to be one mile. A plain reading of the Code sections involved, however, leads me to the opinion that Bastrop's extraterritorial jurisdiction includes that of owners who have previously been admitted to an expanded ETJ at the request of those owners, an area which at some points stretches over twenty miles beyond the City's §42.021 ETJ. The appropriate §242.0015 deadline would then have been January 1, 2004.

NONETHELESS: I have contacted several "experts" in the field, a couple of whom were apparently in or near "the back room" as this "one-stop shopping" legislation was being drafted. While one, after brief review, agrees with my reading, those closely involved in the legislative process opined that the drafters of §242.0015 were contemplating only §42.021 or "statutory" extraterritorial jurisdiction when they imposed the two different deadlines under §242.0015.

I hope this is sufficient. We look forward to your guidance.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Bogart".

Barbara Bogart
Assistant District Attorney
Bastrop County

Office of the Criminal District Attorney
Bastrop County, Texas

COPY

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February 2, 2004

Office of the Attorney General for the State of Texas
ATTN: Opinions Committee Division
William P. Clements Building
P.O. Box 12548
Austin, Texas 78711

Question: What is the deadline under §242.0015 of the Local Government Code for the completion of a certified subdivision regulation agreement between a county and a city whose ETJ based on population pursuant to §42.021 LGC is within one mile of its corporate boundaries, but whose ETJ under §42.022(b) LGC extends far beyond 3.5 miles from its corporate boundaries?

Dear Opinions Folks:

The City of Bastrop, Texas and Bastrop County are uncertain about which deadline given under Local Government Code §242.0015 concerning the completion of a certified subdivision regulation agreement fits their particular circumstances. The current population of the City of Bastrop is between 5,000 and 24,999 inhabitants. Pursuant to LGC §42.021, a municipality of this population possesses extraterritorial jurisdiction in the unincorporated area that is contiguous to and within one mile of its corporate boundaries. According to §242.0015 a municipality with an extraterritorial jurisdiction that extends less than 3.5 miles from the corporate boundaries must submit any disputed issues concerning its interlocal agreement for "one-stop" shopping to arbitration by *January 1, 2006*.

The City of Bastrop, however, also has a significant amount of contiguous ETJ which came into being at the request of owners in unincorporated areas who wished the City to expand its extraterritorial jurisdiction to encompass them. Much of this expanded or "voluntary" ETJ extends far beyond 3.5 miles from the corporate limits of the City of Bastrop. Using this ETJ measure, the deadline for the City's interlocal agreement was *January 1, 2004*.

Section 242.001(b) LGC refers to §212.001 LGC for a definition of extraterritorial jurisdiction. This section states that ETJ "means a municipality's extraterritorial jurisdiction as determined under Chapter 42, . . ." This would appear to include ETJ as described in LGC §42.021 and §42.022. The intent of the legislature, however, in enacting the different deadlines in §242.0015 would appear to be to differentiate between big and small cities; i.e. paragraph (a) suggests that larger cities must have their agreements sorted out by 2004, while smaller cities, perhaps with less staff and funding,

have until 2006 to complete their agreements before arbitration may be invoked. Or is it that a very small city with a large §42.022(b) ETJ is thereby to be considered a "big" city?

I am unable to find any case law or other Attorney General opinions which appear to address our query. We certainly look forward to your help with this puzzle. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Bogart".

Barbara Bogart
Assistant District Attorney
Bastrop county

cc: *Ronnie McDonald, Bastrop County Judge*
Bastrop County Commissioners