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OPINION COMMITTEE

April 4, 2005

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711

FILE # ML-44175-05

I.D. # 044175

RQ-0334-GA

Re: County's authority to assess drainage charges in the extraterritorial jurisdiction of a municipality (the "ETJ").

Dear General Abbott:

I.
Question

May a municipality's authority to assess drainage charges, as set out in Texas Local Government Code §402.047, be assigned by interlocal contract to a county authorized to administer and enforce the county's or the city's drainage regulations in the ETJ?

II.
Legal Analysis

A county may contract with a municipality to authorize a county to administer and enforce the county's or the city's drainage regulations in the ETJ. The two areas of Texas legislation that grants this authority are found in the Interlocal Cooperation Act and Chapter 242 of the Texas Local Government Code (hereinafter "Chapter 242").

Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, states "a local government may contract or agree with another local

government to perform governmental functions and services in accordance with this chapter." TEX. GOV. CODE §791.011. A local government is defined as a "county, municipality, special district, or other political subdivision of this state or another state." TEX. GOV. CODE §791.003(4)(A). "Governmental functions and services" includes "all or part of a function or service." TEX. GOV. CODE §791.003(3). "Drainage" is defined as a "government function and service." TEX. GOV. CODE §791.003(3)(C). Thus, under the Interlocal Cooperation Act, a county may contract with a municipality to authorize a county to administer and enforce the county's or the city's drainage regulations in the ETJ.

Chapter 242 grants the authority to municipalities and counties "to regulate subdivisions and platting in the ETJ under Chapter 12, Sections 232.001-232.005, Subchapters B and C of Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the extraterritorial jurisdiction." TEX. LOC. GOV. CODE §242.001(d)(4)(B).

"The municipality and the county may enter into an interlocal agreement that

(A) establishes one office that is authorized to:

- (i) accept plat applications for tracts of land located in the extraterritorial jurisdiction;
- (ii) collect municipal and county plat application fees in a lump-sum amount; and
- (iii) provide applicants one response indicating approval or denial of the plat application; and

(B) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land." TEX. LOC. GOV. CODE §242.001(d)(4).

This authority to regulate includes the authority "to adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices." Tex. Loc. Gov. Code §232.003(5); Tex. Loc. Gov. Code §242.001(d)(the agreement "may grant the authority to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction of a municipality"). Although a municipality's authority to regulate drainage and assess drainage charges is located in Chapter 402 and not Chapter 212 of the Texas Local Government Code, such authority is arguably a subdivision related permitting activity. Thus, under Chapter 242, a county may contract with a municipality to authorize a county to administer and enforce the county's or the city's drainage regulations in the ETJ.

It has long been held that "counties have only those powers specifically conferred upon them by constitution or statute." Letter Op. Tex. Att'y Gen. 98-118 (1998); citing Canales v. Laughlin, 214 S.W.2d 451 (Tex. 1948). "Prior attorney general opinions have consistently ruled that public entities, other than home-rule cities, may not charge a fee unless it is specifically provided for by law, and that fees are not permitted by implication." Op. Tex. Att'y Gen. No. DM-22 (1991); citing Op. Tex. Att'y Gen. Nos. JM-441(1986); JM-436, JM-345 (1985); MW-5 (1979); H-647 (1975); Moore v. Sheppard, 192 S.W.2d 559 (Tex. 1946); Nueces County v. Currington, 162 S.W.2d 687 (Tex.

1942); McCalla v. City of Rockdale, 246 S.W. 654 (Tex. Comm'n App. 1922, opinion adopted).

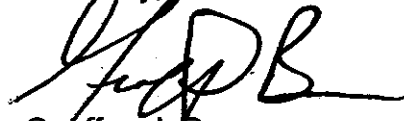
In light of Attorney General Opinion No. JC-0518, the answer may not be so obvious. In JC-0518, your office opined that Texas Local Government Code section 242.002(d)(4)(B) allows a municipality and a county to enter a "contract adopting a unified set of regulations related to plats and subdivisions of land within the municipality's extraterritorial jurisdiction that combines the municipal and county regulations and that eliminates any conflicts between the two." Op. Tex. Att'y Gen. No. JC-0518 (2002). Your office also opined that the Interlocal Cooperation Act "is one of several statutes that permit different local governmental bodies to contract with each other," and as such, "section 242.001(d)(4) of the Local Government Code provides contracting authority independent of the Interlocal Cooperation Act and provides counties and municipalities with additional contracting authority." Id.

III. Conclusion

The authority to enforce and administer drainage charges is not specifically provided by law to counties. However, under the broad contractual authority that counties and municipalities enjoy under Chapter 242, a county may administer and regulate a municipality's plats, subdivision construction plans, and subdivisions of land. This law imputes to a county the authority to regulate either its own or a municipality's drainage regulations in the (ETJ) because these regulations are "subdivision related permits" under Chapter 242. Since a municipality has the authority to assess drainage charges for regulating drainage, it stands to reason, that under current law, a municipality may transfer and the county may obtain this very same authority by way of Chapter 242.

I would appreciate your opinion on this issue. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Geoffrey I. Barr

Cc Greg Parker, Comal County Commissioner, Pct. #3
Tom Hornseth, Comal County Engineer
Dib Waldrip, Criminal District Attorney for Comal County
