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House of Representatives

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January 30, 2006

The Honorable Greg Abbott
Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request For Attorney General Opinion Regarding the Meaning of the Phrase "Service Plan" Throughout Chapter 43, Texas Local Government Code.

Dear General Abbott:

As chairman of the House Committee on Land and Resource Management, and under Rule 3, Section 25(3), of the Rules of the Texas House, which grants jurisdiction to the House Committee on Land and Resource Management "over all matters pertaining to [. . .] annexation [. . .]." I formally ask you and your office to answer the following question regarding the meaning of the term "service plan" in Section 43.141, Local Government Code:

> Does the term "service plan" as used in Section 43.141, Local Government Code, refer to a legally compliant "service plan" as required by Section 43.056, as was intended by the state legislature?
>
> Put another way, may a municipality create a legally deficient service plan, provide services under that plan even though the services do not meet the standards set by state law, and then rely upon the argument that they lived up to the requirements of the (deficient) service plan in order to thwart a petition for disannexation based upon failure to provide services?

Background

The Bryan City Council adopted Ordinance No. 1175 on July 27, 1999, which annexed 105 acres of land along Highway 21 East in what was then part of the extraterritorial

jurisdiction of the City of Bryan (City).[1] A service plan was also created that included the 105 acres, as required by Chapter 43, Local Government Code.[2] Four and one-half years later, in July of 2004, residents of the recently annexed area filed a petition for disannexation with the city secretary arguing that the City had failed to provide services in accordance with the law.

The city argues that it is in compliance with state law in that it provided services under the service plan. The city claims that Chapter 43 allows them to rely upon the four corners of the service plan, even if the service plan is not in compliance with state law.

Analysis

The first rule of statutory construction is to ascertain legislative intent. *See In re Canales*, 52 S.W.3d 698, 702 (Tex. 2001). In order to determine such intent, courts construe provisions in context, considering the statute as a whole. *See* Tex. Gov't Code Ann. § 311.011(a) (Vernon 2005) (words and phrases to be read in context); *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) ("[W]e must always consider the statute as a whole rather than its isolated provisions. We should not give one provision a meaning out of harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone."). Courts will "'not decide the scope of statutory language by a bloodless literalism in which text is viewed as if it had no context.'" *Korndorffer v. Baker*, 976 S.W.2d 696, 700 (Tex. App.–Houston [1st Dist.] 1997, writ dism'd w.o.j.) (citation omitted).

The Code Construction Act allows a reviewing court to consider, among other things, the object sought to be obtained, any legislative history, and the consequences of a particular statutory construction. *See* Tex. Gov't Code Ann. § 311.023 (Vernon 2005); *Fleming Foods of Tex., Inc. v. Rylander*, 6 S.W.3d 278, 283 (Tex. 1999); *R.R. Comm'n of Tex. v. Mote Res.*, 645 S.W.2d 639, 643 (Tex. App.–Austin 1983, no writ) ("Nevertheless, in reading a statute, . . ., a court may consider the circumstances under which the statute was enacted and the underlying legislative history of the enactment.").

Viewed in the context of specific legislative determinations in Section 43.056, the phrase "service plan" as used throughout the chapter, should generally carry the same meaning as found in Section 43.056. It is virtually indisputable that the legislature intended Section 43.141 to be a viable recourse for residents to use against annexation abuses by municipalities. It was certainly not intended to facilitate abuses by placing the rogue municipality in the role of documenting compliance with a service plan that it may have purposely developed outside compliance with Section 43.056.

Importantly, this is not a question regarding what recourse a resident has to challenge the validity of a municipal service plan. Clearly, the proper action for such a challenge is a

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[1] A copy of Ordinance No. 1175 is attached to this request.

[2] A copy of the City of Bryan's service plan is attached to this request. In addition, a copy of service plans from both the City of Rowlett and from the City of Kaufman are attached to demonstrate the perfunctory, yet deficient, nature of some service plans.

quo warranto proceeding. *See City of Wichita Falls v. Pearce*, 33 S.W.3d 415 (Tex. App. - Fort Worth 2000). The question to be determined is does the term "service plan" as used in Section 43.141, Local Government Code, refer to a legally compliant "service plan" as required by Section 43.056, as was intended by the state legislature?

If you have any questions, or need further information regarding this request, please do not hesitate to contact me at (512) 463-0608.

Anna Mowery

Representative Anna Mowery
Chairman, House Committee on Land and Resource Management.

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