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Opinion Committee

Office of the Attorney General of Texas  
ATTN: Opinions Committee  
Post Office Box 12548  
Austin, Texas 78711-2548

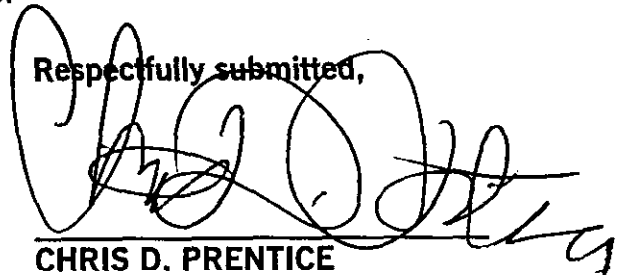
FILE # ML-41173-99  
I.D. # 41173

RE: Request for Attorney General Opinion on whether a system may be used to collect delinquent utility balances by subsequent local governmental bodies after a move and other questions

Dear Committee Members:

Please consider the following request and return your response to my office at the address shown above.

Respectfully submitted,



**CHRIS D. PRENTICE**  
HALE COUNTY ATTORNEY

### QUESTION PRESENTED

This is a request for an opinion addressing whether or not it is permissible for local governments, as defined by the Government Code and the Health and Safety Code<sup>1</sup>, that own and operate a utility system or a sanitary landfill, again as defined by the Government and Health and Safety Codes<sup>2</sup>, to enter into agreements with other similarly situated Local Governments, to collect unpaid utility and landfill service fees.

The agreements would require each participating Local government to collect unpaid utility and landfill service fees owed another participating Local Government from a customer requesting service from it. The requesting customer would be denied service until the outstanding balance with the other participating Local Government had been remitted. The collecting entity would retain a predetermined amount of the sum collected as cost of the service performed pursuant to the agreement. Participating Local Governments would exchange this information via a confidentially secure Internet connection and common computer software designed to process the information.

The following case law and statutory authority is offered in support of the legality of such agreements and procedures between local governments.

### BRIEF IN SUPPORT OF REQUESTED OPINION

Chapter 791 of the Government Code authorizes local governments to contract or agree to provide or perform a governmental function or service that each party to the contract or agreement is authorized to provide or perform individually<sup>3</sup>.

A Local Government has statutory authority to regulate its utility and landfill systems in a manner that protects the interest of the Local government<sup>4</sup>. Although it may not require a customer to pay for utility service previously furnished to a customer at the same service connection<sup>5</sup>, or require the customer's bill be guaranteed by a third party<sup>6</sup>, it has either explicit or implied authority to take other steps to require customers to pay charges imposed for the services furnished.

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<sup>1</sup>TEX. GOV'T CODE ANN. § 791.003 (4) (Vernon 1999). TEX. HEALTH & SAFETY CODE ANN. § 364.003 (3) (Vernon 1999).

<sup>2</sup>TEX. LOC. GOV'T CODE ANN. § 402.001 (a) (Vernon 1999). TEX. HEALTH & SAFETY CODE ANN. § 364.003 (4) (Vernon 1999).

<sup>3</sup>TEX. GOV'T CODE ANN. § 791.001 (c)(2) (Vernon 1999).

<sup>4</sup>TEX. LOC. GOV'T CODE ANN. § 402.001 (b) (Vernon 1999).

<sup>5</sup>TEX. LOC. GOV'T CODE ANN. § 402.0025 (a) (Vernon 1999).

<sup>6</sup>TEX. LOC. GOV'T CODE ANN. § 402.0025 (b) (Vernon 1999).

A Local Government may under certain circumstances require varying utility deposits for customers it deems appropriate<sup>7</sup>, or impose a lien on an owners property for delinquent bills for utility service to the property<sup>8</sup>.

Additionally a Local Government may suspend service to a person who is delinquent in payment of service fees until the delinquent claim is fully paid, and has no obligation to continue to provide service to a customer whose account is in arrears<sup>9</sup>. Suspension of service is available as encouragement to pay delinquent bills so that delivery of service may be restored<sup>10</sup>.

The courts have either stated or impliedly recognized that a Local Government may suspend service from any or all other utilities owned or operated by it to any person who may become delinquent in payment for a service it provides until such delinquency is paid<sup>11</sup> in full.

In one particular case the Eastland Court of Appeals recognized that for public health and sanitation purposes a city furnished water service, sewerage service, and garbage disposal service. The court further stated that all of these services are inter-related and the City is under no obligation to furnish any or all of these services except upon the payment of reasonable charges, adding that any reasonable method of collection is justified and certainly does not infringe a constitutional right<sup>12</sup>. The reasonableness of discontinuing one public service for failure to pay for a related public service has also been recognized in other jurisdictions<sup>13</sup>.

Assuming that it is agreed that (1) based on the authority discussed above, that Local Governments are authorized individually to either suspend or refuse service to a

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<sup>7</sup>TEX. LOC. GOV'T CODE ANN. § 402.0025 (c) (Vernon 1999).

<sup>8</sup>TEX. LOC. GOV'T CODE ANN. § 402.0025 (d) (Vernon 1999).

<sup>9</sup>TEX. HEALTH & SAFETY CODE ANN. § 364.034 (b) (Vernon 1999). City of Breckenridge v. Cozart, 478 S.W.2d 162, 164 (Tex. Civ. App.-Eastland 1972, rehearing denied). Grouthes v. Helotes, 928 S.W.2d 725, 727 (Tex. Civ. App.-San Antonio 1996).

<sup>10</sup>Grouthes v. Helotes, 928 S.W.2d 725, 727 (Tex. App.-San Antonio 1996).

<sup>11</sup>Bexar County v. City of San Antonio, 352 S.W.2d 905 (Tex. Civ. App.-San Antonio 1962, writ dismissed). City of Breckenridge v. Cozart 478 S.W.2d 162, 164 (Tex. Civ. App.-Eastland 1972, rehearing denied).

<sup>12</sup>City of Breckenridge v. Cozart, 478 S.W.2d 162, 163 (Tex. Civ. App.-Eastland 1972, rehearing denied).

<sup>13</sup>Id. at 164 citing Ragh v. Louisville & Jefferson County Met. Sewer Dist., 309 Ky. 442, 217 S.W.2d 232 and City of Covington v. Sanitation District No. 1, Ky., 301 S.W.2d 885.

customer who owes an unpaid balance for utility or landfill services provided by it, and (2) these Local Governments authorized to enter into agreements to collect these unpaid amounts for services rendered for each other before they supply like services to a new customer, there is clearly authority for these entities to exchange utility and landfill customer information.

Generally a government-operated utility<sup>14</sup> may not disclose personal information in a customer's account record if the customer request that the government-operated utility keep the information confidential. However, government-operated utilities can disclose personal information in a customer's account record to another entity that provides water, wastewater, sewer, gas garbage, electricity, or drainage service for compensation<sup>15</sup>.

### SUMMARY

Case law and statutory authority establish a Local Governments authority to discontinue or refuse service to a customer who is in arrears for payment for services it has provided. Additional statutory provisions allow Local Governments to contract with each other to perform functions for each other that they are authorized to do individually. Finally these entities are allowed to exchange the type of customer information necessary to enable them to perform these functions.

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<sup>14</sup>TEX. UTIL. CODE ANN. § 182.052 (a) (Vernon 1999).

<sup>15</sup>TEX. UTIL. CODE ANN. § 182.054 (6) (Vernon 1999).