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May 14, 1999

RQ-0295-JC

Honorable John Cornyn
Attorney General of the State of Texas
c/o Liz Robinson
Chair - Opinions Committee
PO Box 12548
Austin, Texas 78711

RECEIVED

FILE # ML-41700-00

OCT 16 2000

I.D. # 41700

OPINION COMMITTEE

Dear Attorney General:

I am the county attorney for Jones County and by this letter and attached memo I am requesting an Attorney General's Opinion on the topic set out in the attached memo. Because the City of Anson is currently unsure as to how to operate whether as a Home Rule municipality or a General Law municipality, **an expedited opinion is requested** so that the city may operate within the laws of the State of Texas as soon as possible and correct any errors that might be needed if, in fact, the City is not a Home Rule municipality in your opinion. Please contact me if there is anything else needed.

Signed,

A handwritten signature in cursive script, appearing to read "Chad Cowan".

Chad Cowan

Encl.

MEMO

TO: **John Cornyn**
 Attorney General, State of Texas

FROM: **Chad Cowan**
 Jones County Attorney

RE: **Attorney General Opinion on City of Anson's Charter**

DATE: **October 13, 2000**

FACTS: The City of Anson, Texas (the "City"), voted in April 6, 1920, to approve the adoption of a city charter (the "Charter"). The vote, submitted in a regularly ordered election held in the City, was in favor of approving the Charter. Except for the 5,000 population requirement, the election met the legal requirements for a charter election. In a letter dated April 7, 1920, the Mayor of the City sent the Charter to the Secretary of State in Austin, Texas, for filing. *See Enclosed Exhibit A.* In response to the filing C.D. Mims, Secretary of State of the State of Texas sent notice that the Charter was filed for record on July 29, 1920, and recorded in Book 4, Pages 603 to 627 of the Record of City Charters and Amendments as appears in the records at the Secretary of State. *See Enclosed Exhibit B.* Based on the discussions with the Mayor and other members of the community, it is believed that the City has been using its Charter to conduct business as long as they are not inconsistent with the Texas Constitution and the laws of the State of Texas. When various questions arise, the City looks to its Charter for guidance. My opinion request stemmed from a question submitted to me on how the City could annex property. The Charter does not address annexation and in researching the issue on annexation, the question arose as to whether the City was a General-Law or a Home Rule municipality. In order to be a Home Rule municipality the law in 1920 required a population of at least 5,000 residents. Although I do not believe the City was at 5,000 in population in 1920 or since, the Charter was presented to the voters of the City and they passed it. In addition, the letter from the Secretary of State discusses the fact that if a governing body of a city presents a Charter for vote to the city then it is presumed that the city meets the 5,000 population requirement even if the U.S. Census from 1920 does not list the City as having a 5,000 population. *See Enclosed Exhibit B.*

ISSUE: With the passage of the Charter of the City in 1920 and the fact that the City did not have (and it is presumed the City has never had) a population of 5,000 residents, does that make the City a Home municipality or General-Law municipality as defined in the Texas Constitution and the Local Government Code? Is your opinion, at all, affected if the City subsequently ever had a population of 5,000? Also, what document does the City look to in making procedural decisions: the Charter passed in 1920 and its amendments or the laws set out for General Rule municipalities as allowed in the Local Government Code? If the City has taken measures consistent with its Charter but inconsistent with the laws set out for General-Law municipalities, does the City need to take corrective action on those measures and how? If an ordinance of a city is in conflict with a provision of the city charter, does the charter trump the ordinance and the city abides by what the charter requires? Lastly, based on your opinion does

the City follow the procedures for a General-Law municipality or a Home Rule municipality in annexing property?

LAW: Article 11, Section 5 of the Texas Constitution allows cities with populations of 5,000 or more to adopt charters and be Home Rule municipalities. Attorney General Opinion dated March 1, 1921 from C.M. Cureton, Attorney General, which was provided to the City with the letter from the Secretary of State, (*See Enclosed Exhibit C*) seems to state that as long as an election for a charter was submitted to the people by the governing body, then it is presumed that city met the 5,000 population requirement. If that is the case, it seems that the City is a Home Rule municipality. The City does meet the requirements for a Type A General-Law municipality set out in Sections 5.001, 5.901, and 6.001 of the Texas Local Government Code but was not incorporated under these sections.