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OFFICE OF THE ATTORNEY GENERAL
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January 9, 2002

The Hon. John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for an Attorney General's Opinion

FILE # ML-42366-02 2614

I.D. # 42366

Dear Sir:

I am requesting an opinion regarding an interpretation of a portion of recently enacted House Bill No. 1445, which deals with interlocal agreements between counties and cities with respect to the filing of subdivision plats for areas within the extraterritorial jurisdiction of such cities. Does the statutory language authorize a city and county to agree to a hybrid mix of the respective authority granted each entity by the Local Government Code?

The bill (now enacted as Section 242.001, Local Government Code) calls for counties and cities to enter into such interlocal contracts prior to April 1, 2002, the purpose being to make it easier for developers to deal with all of the governmental entities that may be involved with subdivision planning where there is dual jurisdiction. The requirement is for the cities and counties to come up with an agreement for a single point of contact for developers, as well as one set of regulations.

Under Section 242.001(d)(4), the statute authorizes *joint* regulation by a county and a city thereunder that:

> establishes a *consolidated* and consistent set of regulations related to plats and subdivisions of land as authorized by Chapter 212, Sections 231.001-232.005, Subchapters B and C, Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the extraterritorial jurisdiction. [Emphasis added]

It is the term "consolidated" as used in Section 242 for which I am requesting your interpretation.

It would seem that the language can be interpreted in two different ways. Assuming that a city and a county adopt *joint* subdivision regulations, Section 242 may authorize an interlocal contract adopting a hybrid combination of county and city authority; or it may authorize only an "either-or" application, meaning that neither city nor county statutory authority can be revised, depending upon which subdivision regulation is adopted; it must be either the city's statutory authority, without change, or it must be the county's statutory authority, without change.

An example might suffice to explain the dilemma: Under Chapter 212, Local Government Code, a city cannot require a plat where land is being divided into parts of greater than five acres if no part has access and no public improvements are being dedicated. (Sec. 212.004, Local Government Code) The only exemption from the platting requirement for municipalities involves land abutting an airport runway (Sec. 212.046) and whatever the municipality may allow (sec. 212.0045)

On the other hand, Chapter 232 provides counties with the authority to require subdivision plats where parts of land are ten acres or less, a more restrictive regulation. (Sec. 232.0015) However, concomitant with that authority are a number of mandatory exceptions to the platting requirement that are not imposed on municipal authority under Chapter 212, e.g., primary agricultural use, plots divided among family, lots sold to adjoining landowners, land situated in a flood plain, etc.

Can the term "consolidated" as used in Section 242.001, under joint regulation of ETJ subdivisions by city and county, be interpreted to allow an interlocal contract to stipulate that the city shall be the primary contact point and that city subdivision regulations will apply, but that platting will be required on subdivisions up to ten acres, the only exceptions being, however, those under Chapter 212: as determined by the city council or where there is land abutting an airport runway? The exceptions to county platting requirements ordinarily mandated under Chapter 232, in other words, would not apply under the contract even though the county authority to require platting for up to ten acres is being utilized. This would be a hybrid consolidation of city and county regulatory authority.

Or, is it an "either-or" requirement? Either the limitations and exceptions are those stated in Chapter 212, or they are those stated in Chapter 232, without revision. This would be a consolidation of various statutes, but the mixture would not change any requirement or exception. In other words, if the ten-acre requirement is adopted, then the exceptions provided under Chapter 232 would have to apply and could not be made inapplicable under the interlocal contract.

Black's Law Dictionary is not a lot of help, although when it discusses "consolidation of corporations," it makes a distinction between "consolidation" and "merger." To "merge" is for one corporation to retain its identity; "consolidation" produces a single new corporation having the combined assets and authority of its constituents.

I could find no authority that would help in interpreting this provision as it is provided in Section 242. Your assistance in providing an opinion would be of great assistance in helping establish the proper procedure to fulfill the requirements of that section.

Yours very truly,

Rick Miller
Bell County Attorney