

STATE REPRESENTATIVE
DAVID SWINFORD



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OPINION COMMITTEE

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CHAIRMAN, House Committee on State Affairs

October 27, 2005

FILE # ML-44506-05
I.D. # 44506

Office of the Attorney General
The Honorable Greg Abbott
209 W. 14th Street
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0416-GA

Dear Attorney General Abbott,

I would like to submit a request for an Attorney General's Opinion to be made of behalf of the City of Dumas. Currently it is unclear as to what the secondary method would be to enact a city charter amendment. Attached is a letter from the City of Dumas explaining in detail the problem and the questions that need to be answered. If you need any further information please feel free to call my office (512)463-0470.

Sincerely,

A handwritten signature in cursive script that reads "David Swinford".

David Swinford
Chairman, House Committee on State Affairs

CAPITOL OFFICE:

P.O. BOX 2910 • AUSTIN, TX 78768-2910
(512) 463-0470 • FAX (512) 463-8003

DISTRICT OFFICE:

616 E. FIRST STREET • DUMAS, TEXAS 79029
(806) 935-5445 • Fax (806) 935-5672

DISTRICT OFFICE:

724 S. POLK SUITE 760 • AMARILLO, TEXAS 79101
(806) 374-8787 • Fax (806) 374-0868



ROWDY RHOADES
Mayor

CITY OF DUMAS

P.O. Box 438
Dumas, Texas 79029
(806) 935-4101



VINCE DiPIAZZA
City Manager

September 30, 2005

The Honorable David Swinford
District Office
724 South Polk, Suite 760
Amarillo, Texas 79101

Dear Representative Swinford:

The City of Dumas is once again requesting your assistance in obtaining a legal opinion from the Texas Attorney General. This concerns a question about the legality of a provision in the city charter and the subsequent effect if it is not legal.

In 1993, the voters of the city, in a duly called city charter amendment election, approved an amendment to the home rule charter which purports to give the city commission the authority to amend the charter by ordinance. The language is as follows:

"Amendments to the charter may be framed and proposed as (a) in the manner provided by law, or (b) by ordinance of the city commission containing the full text of the proposed amendment and effective upon adoption, or (c) by recommendation of a charter commission by ordinance, or (d) by petition of 25 percent or more of the registered voters of the city."

The conundrum is that Chapter 9 of the Texas Local Government Code does not appear to provide any method other than voter approval in order to enact a city charter amendment. However, it is the voters themselves who granted this authority to the city commission, as the result of a legally held charter amendment election. We realize that even the voters in a home rule city cannot contravene state law, but we are not sure that L.G.C. Chapter 9 is sufficiently clear in this instance.

This charter provision has only been used by the city on one occasion, albeit in a significant way. The city charter was amended by ordinance of the city

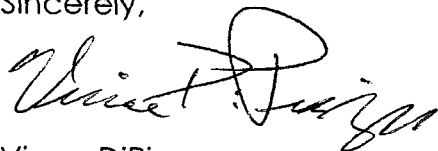
commission in 1995 to establish the current system of staggered, three-year terms for city commissioners. This method of election has been in place ever since. Perhaps validation bills passed by the legislature in the time since adequately address the issue, but we would appreciate guidance here from the AG, as well.

We have, therefore, two questions:

- 1) Is the provision in the city charter granting authority to the city commission to amend the charter by ordinance legal?
- 2) If the referenced provision is illegal, what does that do to the subsequently enacted charter provision establishing terms of office for the city commission?

If I can provide any further information or answer any questions please let me know. As always, thanks for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Vince DiPiazza". The signature is fluid and cursive, with a large initial "V" and "D".

Vince DiPiazza
City Manager