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SENATE DISTRICT 25



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2004 - 2005

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February 16, 2006

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OPINION COMMITTEE

FILE # ML-44638-06

I.D. # 44638

RQ-0454-GA

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
Post Office Box 12548
Austin, Texas 78711-2548

Re: Whether a home-rule municipality is required to improve and maintain an unimproved dedicated public right of way within city limits so that it may provide municipal services to adjacent property annexed by the city?

Dear General Abbott:

The purpose of this letter is to request an opinion on whether a home-rule municipality is required to improve and maintain an unimproved dedicated public right of way within city limits so that it may provide municipal services to adjacent property annexed by the city.

In January 2000, a subdivision plat including property within Austin ("City") city limits and property within the City's extraterritorial jurisdiction ("ETJ") was approved by the City. The City apparently required the developer of the subdivision to dedicate public right of way so that the adjacent tracts in the ETJ would have public access. City Code §25-4-33 states that an applicant shall include all land in the original tract in an application for preliminary plan or plat approval, but that this requirement may be waived if the portion of the original tract contiguous to the area to be subdivided has direct access to a public street, or the applicant has access to a public street by dedicating right of way of at least 50 feet wide. City of Austin Code §25-4-33(B); §25-4-33(D)(2). Section 25-4-33(H) specifies that if an applicant dedicates right of way to provide access to a public



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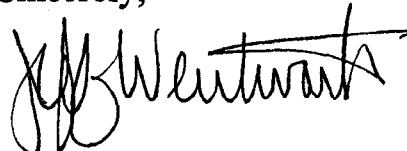
street, he/she is not required to construct improvements within the right of way. The right of ways at issue are on unpaved, caliche roads.

In 2001, during the construction phase of the subdivision, the City annexed the property in its ETJ adjacent to the subdivision. Texas Local Government Code Chapter 43 sets out the statutory process and requirements for municipal annexation. Pursuant to Local Government Code §43.056, the City is required to provide full municipal services to the annexed area, including making "capital improvements necessary for providing municipal services adequate to serve the area." Local Government Code §43.056(e). Section §43.056(f) specifically states that an annexation service plan "may not require a landowner in the area to fund the capital improvements necessary to provide municipal services in a manner inconsistent with Chapter 395 unless otherwise agreed to by the landowner."

The City currently provides solid waste and electric utility services to the annexed area using the right of ways, but residents fear that City fire, EMS and police personnel may not be able to adequately respond because one right of way is not a named street on the official city map and because the trucks and necessary equipment may be unable to traverse the unimproved road. The City has refused to accept the right of ways for operation and maintenance and will not make improvements despite the fact it already provides limited services to the annexed area.

I respectfully request an opinion on whether a home-rule municipality is required to improve and maintain an unimproved dedicated public right of way within city limits to provide municipal services to adjacent property annexed by the city.

Sincerely,



Jeff Wentworth
Chairman

Senate Jurisprudence Committee

JW/kh