



P.O. BOX 12068
 CAPITOL BUILDING
 AUSTIN, TEXAS 78711
 512/463-0112
 FAX: 512/463-0923

DISTRICT OFFICE
 1235 S. MAIN STREET, SUITE 280
 GRAPEVINE, TEXAS 76051
 817/424-3446
 FAX: 817/488-6648

E-MAIL: jane.nelson@senate.state.tx.us

The Senate of the State of Texas

Jane Nelson
 Senate District 12

August 29, 2006

RQ-0526-GA

The Honorable Gregg Abbott
 Attorney General
 Office of the Attorney General
 P.O. Box 12548
 Austin, Texas 78711-2548

Re: Whether a municipality may prohibit registered sex offenders from living in certain locations within the municipality.

Dear General Abbott:

Please accept this letter as a request for an opinion from your office concerning whether a municipality may prohibit registered sex offenders from living in certain locations within the municipality. It has come to my attention that several municipalities in Texas Senate District 12 and in other cities across the state either have passed or are considering passing municipal ordinances that prohibit registered sex offenders from living within a specified distance from locations where children typically congregate, including day-care facilities, schools, public swimming pools, and parks and playgrounds.

The State of Texas as authorized by statute currently collects certain personal information about sex offenders, including the location of their residences, and imposes on persons convicted of certain sexual offenses certain conditions of community supervision or parole related to their residences and movement within certain areas. Chapter 62, Code of Criminal Procedure, establishes the sex offender registration program in this state and requires individuals convicted of or receiving a grant of deferred adjudication for certain sexual offenses to register under that chapter. Specifically, under Chapter 62 an individual required to register under that chapter must inform certain law enforcement agencies of the address of the individual's intended residence and periodically verify the individual's continued residence at that address. Chapter 62 applies to individuals required to register under that chapter regardless of whether the individual is under community supervision or on parole.

Article 42.12, Code of Criminal Procedure, and Chapter 508, Government Code, govern the granting of community supervision and parole and establish certain mandatory conditions of community supervision and parole related to the movement and location of sex offenders.

FILE # ML-44982-06

I.D.# 44982

Committees: HEALTH AND HUMAN SERVICES, CHAIR
 TEXAS LEGISLATIVE COUNCIL
 GOVERNMENT ORGANIZATION
 NOMINATIONS
 FINANCE

EXECUTIVE ADMINISTRATION
 MAIL DISTRIBUTION

SEP 01 2006

ACTION BY Nancy Fuller

COPY TO Ellen Witt

Stacy Napier
RECEIVED

SEP 06 2006

OPINION COMMITTEE

Specifically, under Section 13B, Article 42.12, Code of Criminal Procedure, a judge granting community supervision to a defendant convicted of certain sexual offenses against a child must establish a statutorily prescribed child safety zone applicable to the defendant as a condition of the defendant's community supervision. Similarly, under Section 508.187, Government Code, as a condition for an inmate's release on parole from a penal institution, the parole panel must establish a statutorily prescribed child safety zone applicable to the released inmate. Additionally, under Section 11, Article 42.12, Code of Criminal Procedure, and Section 508.181, Government Code, as a condition of community supervision or parole, a judge may require a defendant or paroled inmate to reside in or within a certain locality or county.

Additionally, Article I of the Texas Constitution contains provisions that grant Texans equal rights under the law and prohibit certain disparate treatment of individuals.

On behalf of municipalities in Texas that have passed or are considering passing municipal ordinances that prohibit registered sex offenders from living within a specified distance from certain locations where children typically congregate, I, therefore, respectfully request your office to answer the following question:

Does a municipality have authority to prohibit registered sex offenders from living in certain locations within the municipality?

In answering this question, please address: (1) whether Chapter 508, Government Code, Article 42.12, Code of Criminal Procedure, or Chapter 62, Code of Criminal Procedure, preempts or otherwise limits a municipality's authority in this regard and (2) whether Section 3 or 19, Article I, Texas Constitution, or any other provision of the Texas Constitution limits a municipality's authority in this regard.

If you have any questions or require further information, please contact my general counsel, Shannon Dick, at 463-0112. Your assistance in this matter is greatly appreciated.

Very truly yours,



Senator Jane Nelson

cc: Governor Rick Perry
Lieutenant Governor David Dewhurst
Speaker Tom Craddick
Senator John Whitmire
Senator Florence Shapiro