

The State of Texas  
House of Representatives

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MAY 21 2009  
OPINION COMMITTEE



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May 19, 2009

FILE # ML-46064-09

ID. # 46064

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

RQ-0798-GA

Re: Request for Opinion regarding a City's ability to re-acquire extraterritorial jurisdiction that it previously relinquished pursuant to Chapter 42 of the Texas Local Government Code

Dear General Abbott:

In January of 2002, the cities of Prosper and Celina (collectively, the "Cities") entered into an Ultimate Boundary Line Agreement (the "Agreement"), whereby the Cities mutually agreed on future common boundary lines. Pursuant to the Agreement, the City of Prosper ("Prosper") discontinued and relinquished from its corporate boundaries and extraterritorial jurisdiction any territory that was beyond the defined ultimate boundary line. The property at issue here (the "Subject Property") sits wholly within this relinquished extraterritorial jurisdiction; it is not and has never been in the extraterritorial jurisdiction of the City of Celina ("Celina"), and, thus, is not presently within the extraterritorial jurisdiction of any city.

Recently, the Cities entered into a Consent Agreement (the "Consent Agreement"), copy attached, by which Prosper purported to re-claim as extraterritorial jurisdiction the Subject Property. Moreover, under the Consent Agreement, at such time as the extraterritorial jurisdiction of Celina extends to the Subject Property, Prosper will again relinquish it so that Celina can then immediately claim it into its extraterritorial jurisdiction. The Subject Property is included in a bill before the 81st Legislature proposing the creation of a municipal utility district. As such, I am requesting your opinion as to whether Prosper can in fact re-acquire extraterritorial jurisdiction that it previously released by amending or superseding a previous boundary agreement.

***1. Is it permissible for a city to acquire extraterritorial jurisdiction in a manner different than the prescribed methods listed in Chapter 42 of the Local Government Code?***

In 1963 the Texas Legislature enacted the Municipal Annexation Act which established a comprehensive statutory scheme to determine whether a municipality may exercise its jurisdiction over a particular area, its "extraterritorial jurisdiction."

Under Chapter 42 of the Local Government Code, the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located within a certain distance, determined by population, of that municipality. A municipality may reduce its extraterritorial jurisdiction by resolution or ordinance. Extraterritorial jurisdiction may be extended, however, only (1) by operation of growth in population; (2) by annexation; or (3) by petition of area landowners.

Here, Prosper agreed to reduce its extraterritorial jurisdiction in January of 2002 when it entered into the Agreement with Celina and approved the Agreement by resolution. However, pursuant to the Consent Agreement, Prosper now purports to re-acquire a portion of its relinquished extraterritorial jurisdiction. It does not do so by way of annexation, petition of landowners or population growth, but rather by agreement with Celina. Is this a permissible method to extend a city's extraterritorial jurisdiction?

***II. Can a city hold a particular tract of land within its extraterritorial jurisdiction solely for the purpose of relinquishing it to another city once its jurisdiction lawfully extends to the tract?***

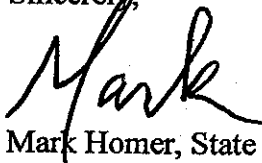
One of the intended results of the Agreement between Prosper and Celina was that the Subject Property would eventually be within the extraterritorial jurisdiction of Celina, and, thus, subject to Celina's regulatory control and possible future annexation. However, Celina's extraterritorial jurisdiction does not now extend, and has never extended, to the Subject Property. Therefore, when Prosper released its extraterritorial jurisdiction over the Subject Property, it was not within the extraterritorial jurisdiction of any city.

In this legislative session, the Subject Property was included in a legislative bill seeking the creation of a municipal utility district. Apparently, when they learned of this, the Cities deemed it prudent to enter into the Consent Agreement, thereby purporting to include the Subject Property within the extraterritorial jurisdiction of Prosper. Under the Consent Agreement, at such time as Celina's extraterritorial jurisdiction would extend to the Subject Property, Prosper would release the Subject Property.

The Texas Legislature's stated purpose for designating a municipality's extraterritorial jurisdiction is "to promote and protect the general health, safety, and welfare of persons residing in and adjacent to" that municipality. In this situation, however, it appears that Prosper's stated purpose for including the Subject Property within its extraterritorial jurisdiction is to hold it for the benefit of Celina, since Celina cannot, at this time, exercise its regulatory authority over said property. I respectfully ask your opinion as to whether, if Prosper may lawfully re-acquire this released extraterritorial jurisdiction, it can lawfully do so for the stated benefit of another municipality.

Thank you for your consideration of this request. Please let me know if I can be of any assistance.

Sincerely,



Mark Homer, State Representative



WHEREAS, Celina relinquishes the Property from its ultimate boundary until Celina's extraterritorial jurisdiction reaches the boundary of the Property; and

WHEREAS, Prosper accepts the Property within its extraterritorial jurisdiction until Celina's extraterritorial jurisdiction reaches the boundary of the Property.

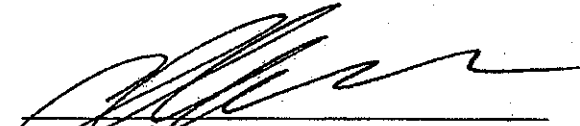
NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties have hereto agreed as follows:

1. Other than with regard to the Property, Prosper and Celina agree that their future ultimate common boundary line and their future respective annexations shall meet at the points and along the lines more specifically set out in The Ultimate Boundary Agreement, attached hereto as Exhibit A for all purposes and intents. The Ultimate Boundary Agreement, however, is amended to have the Property be within Prosper's ETJ.
2. Prosper and Celina agree that the Ultimate Boundary Agreement entered into on January 3, 2002, is in full force and effect and is only modified and adjusted for the period of time described herein and only as to the Property.
3. Prosper and Celina acknowledge and consent to any proposed adjustment of the other city's territory and boundaries as to comply with this Agreement and agree that neither party, as a result of the mutual execution of this Agreement, now and will not, in the future encroach upon the other parties' area beyond the agreed boundary line as adjusted herein without the express written consent of the other.
4. It is expressly agreed and understood that the Property is to be within the extraterritorial jurisdiction of Prosper until the extraterritorial jurisdiction of Celina reaches the boundary of the Property. At that point, the Property will no longer be part of Prosper's ETJ, and the original Ultimate Boundary Agreement shall be in full force and effect and the boundary line shall be as shown in Exhibit A, attached hereto; and
5. It is expressly agreed and understood that this discontinuance and relinquishment by Celina shall operate only in favor of Prosper and shall not constitute a discontinuance or relinquishment of any right including extraterritorial jurisdiction rights, which Celina may be able to assert against any other municipality.
6. This Consent Agreement is executed on behalf of the respective cities by their respective Mayors as authorized by action of the Town and/or City Councils of the respective cities.
7. Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this Agreement be held to be void or unconstitutional by a Court of competent jurisdiction, the same shall not affect the validity of the remaining portions of said Agreement, which shall remain in full force and effect.

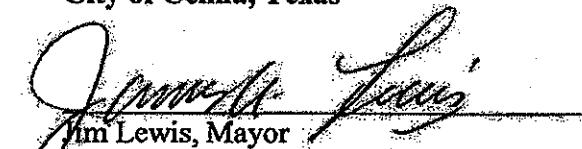
8. Prosper and Celina agree that this Agreement shall take effect only upon ratification and adoption by the governing bodies of each city.
9. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in a court of appropriate jurisdiction in Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.
10. The recitals to this Agreement are incorporated herein.
11. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument but all of the counterparts shall constitute one and the same instrument.

EXECUTED IN MULTIPLE COPIES this the 14<sup>TH</sup> day of April, 2009.

**Town of Prosper, Texas**

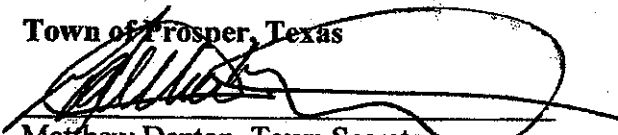
  
\_\_\_\_\_  
Charles Niswanger, Mayor

**City of Celina, Texas**

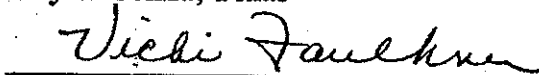
  
\_\_\_\_\_  
Jim Lewis, Mayor

**ATTEST:**

**Town of Prosper, Texas**

  
\_\_\_\_\_  
Matthew Denton, Town Secretary

**City of Celina, Texas**

  
\_\_\_\_\_  
Vicki Faulkner, City Secretary



Consent Agreement

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