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September 12, 2019

*Via Email*

Attorney General Ken Paxton  
Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711  
opinion.committee@oag.texas.gov

RQ-0306-KP

FILE # ML-48614-19

I.D. # 48614

*Re: Request for legal opinion regarding a home-rule city's authority to regulate secondhand dealer who may also operate as a pawnshop*

Dear Attorney General Paxton:

I am requesting your legal opinion regarding whether the City of College Station (the City) has authority to regulate secondhand dealer transactions by ordinance<sup>1</sup> when those businesses also operate as a pawnshop.

#### **Factual Background**

College Station, a home-rule municipality, recently adopted an ordinance regulating secondhand dealers within the City. Before the City Council adopted the ordinance, the City's police department met with the secondhand dealers, including those secondhand dealers who operate as a pawnshop, to ensure the proposed ordinance would address their concerns. The main purpose of the regulation is to assist the police department to investigate property crimes and to return stolen property to its rightful owner. This office has an interest in prosecuting property crimes. Having additional evidence available as a result of the City's ordinance will benefit those prosecutions. After the ordinance was adopted on April 25, 2019, local pawnshops complained to the City that the ordinance's application to their secondhand dealer transactions was preempted by the Texas Pawnshop Act. The City's position is that under the law of general applicability, the City is not preempted from regulating pawnshops to the extent their business model includes a secondhand dealer component. Therefore, those pawnshops acting as secondhand dealers are subject to the ordinance.

<sup>1</sup> College Station, Tex., City Ordinance Subpart A, Chapter 8, Art. VII Secondhand Dealers

### Legal Authority and Discussion

The Texas Constitution provides that home-rule cities possess full power of self-government and look to the Legislature only for limitations of power.<sup>2</sup> The mere fact that the Texas legislature has enacted law addressing a subject does not mean that subject matter is completely preempted, precluding a home-rule city's regulation. If the Legislature chooses to preempt a subject matter usually encompassed by the powers of a home-rule city it must do so with unmistakable clarity.<sup>3</sup>

The City is empowered to regulate secondhand dealers under its home-rule authority.<sup>4</sup> The City's secondhand dealer ordinance applies to "*any person who buys used or secondhand personal property for the purpose of reselling the same, or any person who lends money on the security of used or secondhand personal property deposited with the person and does not include any secondhand dealer who is expressly excluded by any other law from regulation by the City.*" The ordinance broadly regulates all secondhand dealers in College Station, including those who may also be pawnbrokers conducting secondhand dealer transactions.

The Texas Pawnshop Act gives the legislature exclusive authority regarding the operation of pawnshops except in those matters delegated to the consumer credit commissioner who has the authority to regulate only those business practices requiring a pawnshop license.<sup>5</sup> Under the Act a "pawnbroker" means a person engaged in the business of: (A) lending money on the security of pledged goods; or (B) purchasing goods on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period. A pawnbroker business is required to hold a pawnshop license<sup>6</sup>. However, a secondhand dealer as defined in the ordinance is not required to hold a pawnshop license under state law. Further, a secondhand dealer "transaction" as defined in the ordinance means "*the exchange or transfer of funds for used or secondhand goods.*" The City's ordinance does not include in these transactions pawnbroker transactions of lending money on the security of pledged goods or conditioning the purchase of good on redemption by the seller as defined in the Act. The fact that a pawnshop also engages in secondhand dealer transactions should not preclude the City from regulating secondhand dealer transactions so long as those transactions fall outside the pawnshop's operations as regulated by state law.<sup>7</sup>

In 1993, your office considered whether the City of Dallas had authority to regulate outdoor displays and signs at pawnshops as well as high weeds and landscaping.<sup>8</sup> Your office concluded that a home-rule city did not have the authority to regulate outdoor displays and signs at pawnshops because at the time that authority was expressly granted to the commissioner. However, when

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<sup>2</sup> See *Dallas Merch. 's and Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489 at 491 (Tex. 1993) and Tex. Const. art. XI § 5

<sup>3</sup> See *Hollingsworth v. City of Dallas*, 931 S.W.2d 699 at 703 (Tex. App. – Dallas 1996, writ denied), *Dallas Merch. 's and Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489 at 491 (Tex. 1993) and Tex. Att'y Gen. Op. No. DM-253 (1993).

<sup>4</sup> City of College Station City Charter, Section 5.

<sup>5</sup> Tex. Fin. Code § 371.005.

<sup>6</sup> Tex. Fin. Code § 371.0515.

<sup>7</sup> Also, the City's ordinance has an exception excluding the City from regulating property if it is expressly excluded from regulation by other law.

<sup>8</sup> Tex. Att'y Gen. Op. No. 253 (1993).

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considering whether pawnshops were exempt from city-wide regulations regarding high weeds and landscaping, your office concluded that while cities are preempted from "specifically regulating pawnshops, it [the Texas Pawnshop Act] does not purport to exempt such establishments from the operation of generally applicable ordinances . . . such as the Dallas city regulations concerning high weeds and landscaping." Even though the secondhand dealer transaction regulation may be different from a high weeds and landscaping regulation, the City's ordinance regulating secondhand dealers is also one of general applicability. It is not an ordinance directly regulating a pawnshop nor is the regulation one that is expressly granted to the commissioner to regulate. Therefore, the City's ordinance should not be precluded from regulating secondhand dealers also transacting business as a pawnshop. The City's ordinance and the Texas Pawnshop Act should be read in harmony with each other, leaving both in effect.

Thank you for your consideration. Please contact my office should you need any additional information or details regarding this request.

Respectfully submitted,



Rodney W. Anderson  
Brazos County Attorney

**Enclosure:**

College Station, Tex., City Ordinance Subpart A, Chapter 8, Art. VII *Secondhand Dealers*

Cc: College Station City Attorney