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June 14, 2021

VIA EMAIL: opinion.committee@oag.texas.gov

Honorable Ken Paxton
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

*Re: Request for Opinion
City of Cumby, Texas - Ordinance No. 2021-03*

Attorney General Paxton,

Please be advised that I am the County Attorney of Hopkins County, Texas. The City of Cumby, Texas, a Type A general law municipality located in Hopkins County, Texas, is needing clarification on applicable law as it relates to the following ordinance. On or about February 9, 2021, the City Council of the City of Cumby enacted Ordinance No. 2021-03, establishing the conditions in which an elected official may be disqualified from serving. A copy of Ordinance No. 2021-03 is attached for reference.

Texas Local Government Code §22.008 provides that “[a]n officer who is entrusted with the collection or custody of funds belonging to the municipality and who is in default to the municipality may not hold any municipal office until the amount of the default, plus 10 percent interest, is paid to the municipality.”

The City now requests an opinion from your office interpreting applicable law on the following questions:

1. Is the City interpreting the Texas Local Government Code §22.008(a) correctly when it states in Ordinance No. 2021-03 that “elected officials are officers who are entrusted with the collection or custody of funds belonging to the municipality?”
2. Is it appropriate for the City to define default as either “a) [unpaid] [t]axes or other liability due to the City of Cumby or Hopkins County; or b) [unpaid] [w]ater, sewer, garbage, or any other utility in the candidate’s name or associated with the address upon which the candidate establishes residency in the City of Cumby?”

3. Can the City do the following: a) require that any applicant for an elected position, in order to qualify for an elected position, must not have been in arrears to the city or county for utilities three or more times in the twelve-month period preceding the filing of the application for a place on the ballot; b) disqualify any candidate running for an elected position that enters into default to the city or county; and c) disqualify any elected official holding office that enters into default to the city or county during their term of office?

I appreciate your assistance in this matter. Please feel free to contact my office with any questions or requests for additional information.

Sincerely,

Dustanna Rabe
County Attorney
Hopkins County, Texas

CITY ORDINANCE NO. 2021-03

AN ORDINANCE OF THE CITY OF CUMBY ESTABLISHING THE CONDITIONS IN WHICH AN ELECTED OFFICE MAY BE DISQUALIFIED FROM SERVING.

WHEREAS, the City of Cumby, Texas, has authority to regulate, limit, prohibit, and direct additional, or supplementary conditions and qualifications be placed on its elected officials through its powers to protect the public health, safety, and general welfare and so long as the additional requirements do not conflict with any existing law; and

WHEREAS, the City Council for the City of Cumby desires to amend its conditions and qualifications to run for and hold office as an elected official; and

WHEREAS, the City Council for the City of Cumby acknowledges and affirmatively states that its elected officials are officers who are entrusted with the collection or custody of funds belonging to the municipality; and

WHEREAS, the City Council for the City of Cumby desires to disqualify any official from holding or running for office until the amount of the default, plus ten percent (10%) interest is paid to the municipality;

WHEREAS, the City Council for the City of Cumby considers an official to be in default when the official has is in arrears for any of the following:

- a. Taxes or other liability due to the City of Cumby or Hopkins County; or
- b. Water, sewer, garbage, or any other utility in the candidate's name or associated with the address upon which the candidate establishes residency in the City of Cumby.

WHEREAS, the City Council for the City of Cumby requires that any candidate for an elected position shall not be in arrears to the City of Cumby or Hopkins County for the payment of utilities in the candidate's name or associated with the address upon which the candidate establishes residency in the City of Cumby three or more times within the twelve-month period prior to filing the application for a place on the ballot.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CUMBY, TEXAS:

SECTION 1. Controlling Ordinance. Ordinance 2021-03 is adopted as stated herein. Any other ordinance that conflicts herein is hereby replaced and repealed and declared no further in force or effect.

SECTION 2. Penalty for Disqualification. Any official disqualified herein may not hold office until the arrearage has been corrected plus ten percent (10%) interest. If a member is disqualified to hold office for three (3) consecutive meetings, and therefore absent from the meetings, the member will be considered to have vacated their office as provided by law.

SECTION 3. Conflicting Ordinances. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted herein are hereby amended to the extent


of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

SECTION 4. Severability. That if any section, provision, subsection, paragraph, sentence, clause, phrase or word in this ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Cumby, Texas hereby declares it would have enacted such remaining portions, despite such invalidity.

SECTION 5. Effective Date. This Ordinance shall be in full force and effect immediately upon its passage in accordance with the provisions of the Tex. Loc. Gov't. Code.

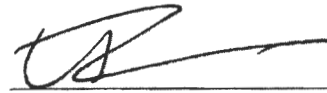
SECTION 6. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on the 9th day of February, 2021.



Douglas Simmerman, Mayor

ATTEST & APPROVED AS TO FORM:



Leigh Thompson, City Attorney

