



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

April 26, 1968

Hon. Nolan Queen
County Attorney
Parker County Courthouse
Weatherford, Texas 76086

Opinion No. M-226

Re: Whether the Clerk of Parker County may accept a city subdivision plat of property for recording where the property lies within an area which is "overlapped" by the extraterritorial jurisdiction of two cities in the county, in the absence of apportionment between them by agreement or court action, and related question.

Dear Mr. Queen:

In your letter of March 28, 1968, you requested the opinion of this office as to whether the County Clerk of Parker County may accept a city subdivision plat of property for recording where the property lies within an area which is "overlapped" by the extraterritorial jurisdiction of two cities in the county, in the absence of apportionment between these cities by agreement or by court action, under Article 974a, Vernon's Civil Statutes, and Article 970a, Vernon's Civil Statutes.

Article 974a, Vernon's Civil Statutes, reads, in part, as follows:

"Sec. 3. That it shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act, if said city has a City Planning Commission and if it has no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If such land lies outside of and within five (5) miles of more than one (1) city affected by this Act, then the requisite approval shall be by the City Planning Commission or governing body, as the case may be, of such of said cities having the largest population;"
(Emphasis added.)

Article 970a, Vernon's Civil Statutes, provides, in part, as follows:

"Sec. 3. A. In order to promote and protect the general health, safety, and welfare of persons residing within and adjacent to the cities of this State, the Legislature of the State of Texas declares it to be the policy of the State of Texas that the unincorporated area, not a part of any other city, which is contiguous to the corporate limits of any city, to the extent described herein, shall comprise and be known as the extraterritorial jurisdiction of the various population classes of cities in the State and shall be as follows:

"(1) The extraterritorial jurisdiction of any city having a population of less than five thousand (5,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within one half (1/2) mile of the corporate limits of such city.

"(2) The extraterritorial jurisdiction of any city having a population of five thousand (5,000) or more inhabitants, but less than twenty-five thousand (25,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within one (1) mile of the corporate limits of such city.

"(3) The extraterritorial jurisdiction of any city having a population of twenty-five thousand (25,000) or more inhabitants, but less than fifty thousand (50,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any city, within two (2) miles of the corporate limits of such city.

"(4) The extraterritorial jurisdiction of any city having a population of fifty thousand (50,000) or more inhabitants, but less than one hundred thousand (100,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within three and one half (3-1/2) miles of the corporate limits of such city.

"(5) The extraterritorial jurisdiction of any city having a population of one hundred thousand (100,000) or more inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within five (5) miles of the corporate limits of such city.

"B. In the event that on the effective date of this Act the area under the extraterritorial jurisdiction of a city overlaps an area under the extraterritorial jurisdiction of one or more other cities, such overlapped area may be apportioned by mutual agreement of the governing bodies of the cities concerned. Such agreement shall be in writing and shall be approved by an ordinance or resolution adopted by such governing bodies."

These two statutes were construed in Attorney General's Opinion C-459 (1965), wherein it was held that Article 970a of Vernon's Civil Statutes controls the limits of the extraterritorial jurisdiction of a city. In reaching this conclusion it was observed that House Bill 13 (Article 970a, Vernon's Civil Statutes) contained practically verbatim the provisions of Article 974a, Vernon's Civil Statutes. Section 3J of that original bill provided:

"The provisions of this Sec. 3 are cumulative of the provisions of Art. 974a, R.C.S. of Texas, but the provisions of this act shall control in event of conflict."

When this bill was sent to the Senate and amended, this section was omitted.

The opinion further concluded:

"Acts 58th Leg. 1963, Ch. 160, p. 447, enacting the Municipal Annexation Act (Art. 970a) provides in Art. III of the Act that it shall not repeal Acts 40th Legislature, 1927, Ch. 231 as amended (Art. 974a and Vernon's Annotated Penal Code Art. 427b), unless expressly inconsistent with the act, and then only to the extent of such inconsistency."

In reaching the conclusion that Article 970a, Vernon's Civil Statutes, establishes the extraterritorial jurisdiction of any city, Attorney General's Opinion C-459 (1965) found that the

only inconsistency between Article 970a, Vernon's Civil Statutes, and Article 974a, Vernon's Civil Statutes, is the distance limitations imposed upon incorporated cities according to population brackets with regard to extraterritorial jurisdiction. After a careful review of Article 970a, and Article 974a, and after a review of the foregoing Attorney General's Opinion, it is the opinion of this office that there is no conflict between any provision of Article 970a, V.C.S., and Section 3 of Article 974a, V.C.S., with regard to the recordation of subdivision plats. As previously stated, this section of Article 974a provides that in the event that the subdivision in question falls "within five (5) miles of more than one (1) city affected by this Act, then the requisite approval shall be by the City Planning Commission or governing body, as the case may be, of such of said cities having the largest population;" (Emphasis added.)

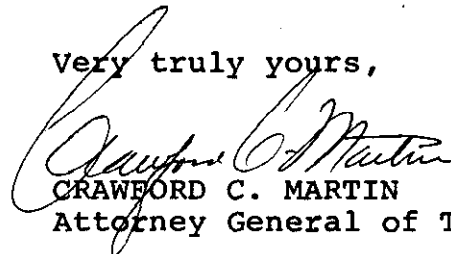
It is, therefore, the opinion of this office that the County Clerk of Parker County, Texas, may accept for filing a city subdivision plat of property which lies within an area overlapped by the extraterritorial jurisdiction of two cities in the county, when such plat bears approval by the City Planning Commission or governing body of Weatherford, Texas, the city having the largest population.

In view of this holding, it is not necessary for this office to rule on the related question contained in your request.

S U M M A R Y

The County Clerk of Parker County, Texas, may accept for filing a city subdivision plat of property which lies within an area overlapped by the extraterritorial jurisdiction of two cities in the county, when such plat bears approval by the City Planning Commission or governing body of the city having the largest population.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Brock Jones, Jr.
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APPROVED:
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