Office of the Attorney General
State of Texas

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February 19, 1997

The Honorable Keith Oakley
Chair, Committee on Public Safety
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78711-2548

Letter Opinion No. 97-002

Re: Municipal zoning regulation of manufactured housing (ID# 38855)

Dear Representative Oakley:

You have asked this office whether the City of Greenville, Texas, by modifying its zoning ordinance to permit some but not all types of manufactured housing within a designated residential district, is likely to fall afoul of the Manufactured Housing Standards Act (the "act"), article 5221f, V.T.C.S. While this office cannot comment in the opinion process on a particular proposed municipal ordinance, we can discuss the question on a more general level. You ask, on that level, whether a city may allow one type of manufactured house, namely the double-wide composition-shingled type, to the exclusion of single-wide or aluminum-roofed manufactured houses. The answer to that question depends upon whether single-wide or aluminum-roofed dwellings are to be characterized for the purposes of article 5221f as "mobile homes" or "HUD-Code manufactured housing," which is to say whether such dwellings meet the standards of the United States Department of Housing and Urban Development ("HUD") for manufactured housing.

The relevant sections of article 5221f are section 4(g) and section 4A. Section 4(g) provides:

> A local governmental unit of this state, without the express approval of the board following a hearing on the matter, may not adopt different standards from those promulgated by the [executive] director [of the Department of Housing and Community Affairs] for the construction or installation of manufactured housing within the local governmental unit.

Thus, section 4(g) preempts any local governmental entity from regulating the construction or installation of manufactured housing. It is important to note, however, that the section does not speak of the authority of local government with respect to zoning.

Indeed, in *Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982), the supreme court ruled that the Manufactured Housing Standards Act did not preempt local zoning ordinances:

> The referenced state and federal legislation has, to an extent, preempted the field as to construction, safety, and installation of mobile homes. We

> find nothing in the statutes, however, that creates a conflict with the Brookside Village ordinances regulating the location of mobile homes.

Id. at 796.

Comeau, however, does not end the inquiry. Subsequent to the *Comeau* case, section 4A was added to article 5221f. Section 4A reads, in relevant part:

> (a) An incorporated city *may prohibit the installation* of a mobile home for use or occupancy as a residential dwelling within its corporate limits. Any such prohibition must be prospective and shall not apply to a mobile home previously legally permitted and used or occupied as a residential dwelling within the city . . . .
>
> (b) Upon application the installation of HUD-Code manufactured homes shall be permitted as residential dwellings in *those areas determined appropriate by the city* . . . . [Emphasis added.]

A mobile home is defined by the act as "a structure" of certain characteristics "that was constructed before June 15, 1976." V.T.C.S. art. 5221f, § 3(1). A "HUD-code manufactured home" is defined as "a structure" of the same characteristics save that it was "constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development." *Id.* § 3(19).

As we read section 4A, then, mobile homes that do not meet HUD standards may be prohibited by cities under section 4A(a). However, under section 4A(b), units that do meet HUD's standards must be provided for within cities. The city has the power to zone such units in the sense of determining suitable or unsuitable locations for their installation, but does not have the power to forbid them altogether.

The bill analysis prepared for section 4A by the House Committee on Business and Commerce is to the same effect. It declares that "city governments would be allowed to designate locations for manufactured housing developments but would not be allowed to pass banning ordinances." Accordingly, the city may only forbid single-wide or aluminum-roofed units if they do not meet HUD standards. Whether particular sorts of manufactured housing meet the federal standards is in our view a question better directed to the Department of Housing and Urban Development than to this office.[1] If they do not, the City of Greenville may, under the terms of article 5221f, V.T.C.S., forbid their installation. If they do, it may zone their location, but not prohibit it.

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[1]We assume that mobile homes manufactured before June 15, 1976 do not meet HUD standards. In any event, a mobile home manufactured before that date, even if it otherwise meets such standards, does not come within the article 5221f, section 3(19) definition.

SUMMARY

Under the terms of the Manufactured Standards Housing Act, article 5221f, V.T.C.S., an incorporated city may forbid the installation of single-wide or aluminum-roofed dwellings only if such dwellings fail to meet the standards specified by the United States Department of Housing and Urban Development.

Yours very truly,

James E. Tourtelott

James E. Tourtelott
Assistant Attorney General
Opinion Committee