



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1997

The Honorable John Vance
Dallas County District Attorney
133 North Industrial Boulevard, LB 19
Frank Crowley Courts Building
Dallas, Texas 75207-4313

Letter Opinion No. 97-055

Re: Authority of the City of Wylie to enforce city ordinances outside city limits (ID# 38929)

Dear Mr. Vance:

You ask whether the City of Wylie, a home-rule city, may enforce its ordinances in unincorporated areas outside the Wylie city limits in Collin and Dallas Counties.

The City of Wylie ("the city") lies mostly within Collin County and partly within Dallas County. The city has a fire department that provides fire protection services within city limits. You tell us that the city has contracted with Collin County to provide fire protection services to unincorporated areas of the county. Although this office has not reviewed the contract, you tell us that it was made pursuant to Local Government Code section 352.001, which authorizes a county commissioners court to contract with a city to provide fire protection services to unincorporated areas of a county. You say that no such contract exists between the city and Dallas County.

As a general rule, a city can exercise its powers only within the city's corporate limits unless power is expressly or impliedly extended by the Texas Constitution or by statute to apply to areas outside the limits. *See City of Austin v. Jamail*, 662 S.W.2d 779, 782 (Tex. App.--Austin 1983, writ dismissed w.o.j.); *City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 686 (Tex. Civ. App.--Waco 1980, no writ); *City of Sweetwater v. Hammer*, 259 S.W. 191, 195 (Tex. Civ. App.--Fort Worth 1923, writ dismissed); *Ex parte Ernest*, 136 S.W.2d 595, 597-98 (Tex. Crim. App. 1939); Attorney General Opinion JM-226 (1984) at 2. Extraterritorial power will be implied only when such power is reasonably incident to those powers expressly granted or is essential to the object and purposes of the city. *Jamail*, 662 S.W.2d at 782; *Westlake Hills*, 598 S.W.2d at 683. "[A]ny fair, reasonable, or substantial doubt as to the existence of a power will be resolved against the municipality." *Westlake Hills*, 598 S.W.2d at 683.

Although you do not tell us what particular ordinance is at issue, we understand you to be concerned about enforcement of the city fire code generally. Your questions require us to determine whether the city has express or implied authority to enforce its fire code outside city limits. However, because you do not ask about a specific ordinance, we do not determine whether the city has express or implied authority to enforce any particular ordinance.

Your first question is whether the city may enforce its fire ordinances in Dallas County, where the city does not provide fire protection services. You say that the city is enforcing its ordinances

in Dallas County in apparent reliance upon Local Government Code chapter 42. Chapter 42 designates the extraterritorial jurisdiction of cities in order to allow cities to “promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.” Local Gov’t Code § 42.001. As a municipality with a population of 8,716 inhabitants,¹ Wylie has extraterritorial jurisdiction over unincorporated areas within the one-mile area contiguous to its boundaries. *Id.* § 42.021(2) (establishing one-mile extraterritorial jurisdiction for municipalities with 5,000 to 24,999 inhabitants).

No specific purpose for extraterritorial jurisdiction is provided in chapter 42, and courts have not interpreted chapter 42 as allowing general extraterritorial enforcement of city ordinances. Instead, courts have allowed cities to enforce ordinances in their extraterritorial jurisdiction only if expressly authorized to do so by other specific statutes. *See Jamail*, 662 S.W.2d at 782-83; *West Lake Hills*, 598 S.W.2d at 683. We agree with you that chapter 42 alone does not give the city express authority to enforce its ordinances in areas of Dallas County that lie beyond the city’s boundaries.

You state that the city relies upon Local Government Code section 217.042 for express authority to enforce city ordinances in the city’s extraterritorial jurisdiction and beyond. Section 217.042 provides:

(a) [A home-rule] municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits.

(b) The municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.

You believe that the city has no authority to issue citations pursuant to section 217.042 for engaging in a prohibited activity unless the city has declared the activity to constitute a nuisance. We agree. Although it is within the city’s discretion whether to exercise the extraterritorial power granted to it in section 217.042, the city must observe the statutory provisions if the power is to be used. *See Canales v. Laughlin*, 214 S.W.2d 451, 457 (1948). Section 217.042 requires a definition or declaration of an activity as a nuisance before a city can prohibit a nuisance or enforce a nuisance ordinance outside city limits. Thus we conclude that the city may not enforce an ordinance with respect to an activity outside city limits under the authority of Local Government Code section 217.042 unless the city has enacted an ordinance declaring the activity to constitute a nuisance.²

¹See U.S. Dep’t of Commerce, Census 90, General Population Characteristics: Texas 14 (1992).

²We note that courts have consistently upheld the enforcement of city ordinances prohibiting the sale, storage, and use of fireworks in the city’s extraterritorial jurisdiction under the authority of section 217.042 and its predecessor where the ordinances declared fireworks to be nuisance. *See, e.g., Parker v. City of Fort Worth*, 281 S.W.2d 721, 722-25 (Tex. Civ. App.—Fort Worth 1995, no writ); *Stoughton v. City of Fort Worth*, 277 S.W.2d 150, 153-54 (Tex. Civ. App.—Fort Worth 1995, no writ); *Treadgill v. State*, 275 S.W.2d 658, 662-63 (Tex. Crim. App. 1955).

Your second and third questions pertain to Collin County. You ask whether the city may enforce its fire ordinances in unincorporated areas in the county called "fire districts," where the city provides fire protection services by contract with the county. You ask in particular about regulation of outdoor burning activities in the fire districts. No statute expressly authorizes a city to apply its fire ordinances generally in areas outside its boundaries. We must determine, therefore, whether power to apply city fire ordinances extraterritorially may be implied from the city's provision of fire protection services to the county under the authority of Local Government Code section 352.001.³

Local Government Code chapter 352 authorizes counties to provide fire protection services to county residents who live outside of municipalities. *See* Local Gov't Code § 352.001(a). This authority includes the power to contract with a city for the provision of fire protection services in the county. *Id.* § 352.001(b)(3). In providing such services to county residents, the city acts as an instrument of the county. Section 352.004 makes city employees and fire fighters the agents of the county when they are providing fire protection services. *Id.* § 352.004(b).⁴ Section 352.004 also deems a city not liable for the acts of its employees in fighting fires in the county. *Id.* § 352.004(c).⁵

We view section 352.001's authorization of a city-county contract as an extension of a county's authority to provide fire protection services, rather than as an expansion of city power. Thus we do not infer from chapter 352 that the city's fire ordinances apply to areas outside city limits merely because the city is providing fire protection services there.

We reach the same conclusion with respect the regulation of outdoor burning. The Texas Clean Air Act authorizes the Texas Natural Resource and Conservation Commission (the "TNRCC") to control and prohibit the outdoor burning of waste and combustible material. Health & Safety Code § 382.018. The TNRCC has adopted rules prohibiting outdoor burning except in certain circumstances. *See* 30 T.A.C. §§ 111.201 - .221. We understand that the city has enacted its own outdoor burning ordinances,⁶ and that Collin County has adopted outdoor burning "guidelines" to

³Because we have not reviewed the contract between the city and the county, we cannot determine whether authority may be implied from the express terms of their agreement. Such a determination would entail findings of fact and the construction of a contract, both of which actions this office normally declines to undertake. We note that the Interlocal Cooperation Act, Government Code chapter 791, allows local governments that are party to an agreement for the performance of a governmental function or service to "apply the local law of a party as agreed by the parties." Gov't Code § 791.012. We have found no support for the proposition that the Interlocal Cooperation Act allows a city to extend its authority solely by agreement and, in any event, we assume that no such agreement between Collin County and the city has been made.

⁴Section 352.004(b) provides: "The act of a person who, in carrying out a county's authority to provide fire protection, furnishes fire protection to a county resident who lives outside the municipalities in the county, including the act of a person who is a regular employee or fire fighter of a municipality, is considered to be the act of an agent of the county."

⁵Section 352.004(c) provides: "A municipality is not liable for the act of its employee in fighting fires outside the municipality under a contract between the commissioners court of the county and the governing body of the municipality."

⁶Section 382.113 states that cities retain their rights to "enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with [chapter 382] or the [TNRCC]'s rules or orders." Health & Safety Code § 382.113(a)(2).

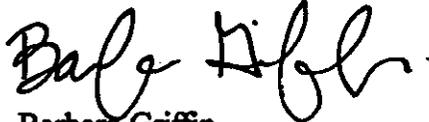
enforce state law and help residents comply with the law.⁷ In accordance with the discussion above, we conclude that the city may not issue or deny city outdoor burning permits in the fire districts.

Finally, we note that county fire marshals have a statutory obligation to "coordinate the work of the various fire-fighting and fire prevention units in the county." Local Gov't Code § 352.019. It is for the county to determine how it will coordinate with the city to enforce state and county fire regulations in the fire districts.

S U M M A R Y

The City of Wylie must define or declare an activity to be a nuisance before it can enforce a city ordinance outside city limits pursuant to Local Government Code section 217.042. Local Government Code section 352.001, which authorizes a county commissioners court to contract with a city for the provision of fire protection services in unincorporated areas of the county, does not authorize a city to enforce its fire code in areas of the county outside city limits to which the city provides fire protection services, nor does it authorize a city to issue or deny outdoor burning permits in the areas.

Yours very truly,



Barbara Griffin
Assistant Attorney General
Opinion Committee

⁷See Local Gov't Code § 352.019 (authorizing county fire marshals to "enforce all state and county regulations that relate to fires" in county areas outside of municipalities).