



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 23, 1998

The Honorable Jerry Patterson  
Chair, Committee on Veteran Affairs and  
Military Installations  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 98-093

Re: Whether article 5221f, V.T.C.S., precludes a  
home-rule city from regulating unoccupied or unsafe  
mobile homes and manufactured homes (RQ-1123)

Dear Senator Patterson:

On behalf of the City of Nacogdoches, you ask whether article 5221f, V.T.C.S., precludes a home-rule city from regulating unoccupied or unsafe mobile homes and manufactured homes that pose a threat to public health and welfare. We conclude that it does not.

Article 5221f generally governs the construction and installation of manufactured housing.<sup>1</sup> The statute requires the Texas Department of Housing and Community Affairs (the "department") to adopt standards and requirements for the installation and for the construction of manufactured housing.<sup>2</sup> State construction standards must be consistent with federal standards promulgated under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401 - 5426.<sup>3</sup> A local governmental unit may not adopt standards different from those adopted by the department for the construction or installation of manufactured housing without the express approval of the governing body of the department.<sup>4</sup> The local governmental unit must demonstrate that the public health and safety require the different standards.<sup>5</sup> The department is required to

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<sup>1</sup>"Manufactured housing," "manufactured home," and "mobile home" are terms of art defined by article 5221f. See V.T.C.S. art. 5221f, § 3(9), (15), (17). We use these terms as they are defined in the statute. The city is bound by these definitions of the terms. *Id.* § 3A.

<sup>2</sup>*Id.* § 4(a).

<sup>3</sup>See *id.* § 4(c); see also 42 U.S.C. § 5403(d) (state or local government may not promulgate manufactured home construction or safety standard inconsistent with federal standard); 24 C.F.R. § 3282.11(d) (state rule may not interfere with federal regulation of manufactured home industry). We are not aware of any federal statute or regulation governing manufactured homes as public nuisances. We note, however, that the city does not ask about federal law. Accordingly, we do not resolve any federal preemption questions.

<sup>4</sup>V.T.C.S. art. 5221f, § 4(g).

<sup>5</sup>*Id.*; see also *id.* § 18(b) (ordinances in conflict with article 5221f superseded and preempted to extent of (continued...))

cooperate with local governmental units and to authorize them to inspect the installation of manufactured housing on home sites.<sup>6</sup> Section 4A of the statute deals particularly with a municipality's authority to regulate manufactured housing as a land use. It provides that a municipality may prohibit the installation of mobile homes as dwellings prospectively and must allow for the replacement of an existing mobile home with a manufactured home.<sup>7</sup> A municipality has the authority to zone manufactured homes, but may not forbid them altogether.<sup>8</sup>

We understand from your letter and the attachment thereto that the City of Nacogdoches would like to regulate unoccupied and unsafe mobile homes and manufactured homes that pose a threat to public health and welfare. We do not believe that article 5221f preempts the authority of the city to regulate in this area. First, article 5221f primarily governs manufactured home standards rather than mobile home standards<sup>9</sup> and does not limit the authority of a city to promulgate the latter, with one limited exception.<sup>10</sup> We do not believe that article 5221f precludes a city from regulating unoccupied or unsafe mobile homes that pose a threat to public health and welfare.<sup>11</sup>

With respect to manufactured homes, it is clear from the statute's statement of purpose, section 2, that the act is intended to protect consumers of manufactured housing and those who dwell in manufactured homes.<sup>12</sup> To achieve this end, article 5221f governs the *installation* and

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<sup>5</sup>(...continued)  
conflict).

<sup>6</sup>V.T.C.S. art. 5221f, § 4(j).

<sup>7</sup>*Id.* § 4A(a).

<sup>8</sup>*Id.* § 4A(b); *see also Texas Manufactured Housing Ass'n v. City of Nederland*, 905 F. Supp. 371, 377 (E.D. Tex. 1995), *aff'd*, 101 F.3d 1095 (5th Cir. 1996) (discussing scope of section 4A); Letter Opinion No. 97-002 (1997) (same).

<sup>9</sup>*See* V.T.C.S. art. 5221f, §§ 3(9), (15), (17) (defining "manufactured housing," "manufactured home," and "mobile home"), 3A ("A mobile home is not a HUD-manufactured home and a HUD-manufactured home is not a mobile home for any purposes under the laws of this state.").

<sup>10</sup>Article 5221f, section 4A permits a city to prohibit the installation of mobile homes prospectively but not retrospectively. *Id.* § 4A(a). An ordinance that had the effect of prohibiting all existing mobile homes in the city could run afoul of section 4A.

<sup>11</sup>*But see* note 10 *supra*.

<sup>12</sup>Section 2 provides as follows:

The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not

(continued...)

*construction* of manufactured housing,<sup>13</sup> and related subjects like manufactured home sales, resales, warranties, and title.<sup>14</sup> Article 5221f, however, does not speak to regulation of unoccupied structures and structures that subsequent to their construction and installation become a threat to public health and welfare -- in other words, public nuisances -- and we do not believe that municipal regulation in this area is preempted by or is inconsistent with the statute.<sup>15</sup> Therefore, we conclude that article 5221f does not preclude a city from regulating unoccupied or unsafe manufactured homes that pose a threat to public health and welfare.

The City of Nacogdoches also poses various questions about what form an ordinance regulating unoccupied, unsafe mobile homes and manufactured homes should take. The city asks, for example, "What standards are to be used to determine whether a mobile home or manufactured housing is substandard or unsafe?" and "Since mobile homes and manufactured housing are titled, how does a city obtain title to them?"

This office generally responds to discrete legal questions and is not equipped to draft municipal ordinances or to give general legal advice. We cannot develop standards for a municipal ordinance. We can, however, suggest some ways in which the city might draft an ordinance to avoid conflicts with article 5221f. To avoid conflict with state standards regulating construction and installation of manufactured homes, the city might consider promulgating standards based on danger to *public* health and safety. Standards based on habitability or risks to occupants may be more difficult to distinguish from state standards regulating construction and installation of manufactured housing. In addition, an ordinance would be less likely to conflict with article 5221f if it clearly

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<sup>12</sup>(...continued)

adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in the state with regard to manufactured housing. The legislature finds that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies. In recognition of these findings, the legislature deems it necessary to expand various regulatory powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

V.T.C.S. art. 5221f, § 2.

<sup>13</sup>See *id.* § 4(a) (authorizing the department to adopt "standards and requirements for the installation and for the construction" of manufactured housing), (g) (local governmental unit must seek the approval of the department for "standards . . . for the construction or installation of manufactured housing" that differ from the department's standards).

<sup>14</sup>See, e.g., *id.* §§ 6, 7, 8, 14, 19.

<sup>15</sup>You attach a letter from a staff attorney with the department to the city attorney of the City of Nacogdoches that reaches a similar conclusion. Letter from Ann Denman, Staff Attorney, Texas Department of Housing and Community Affairs to Rob Atherton, City Attorney, City of Nacogdoches, dated March 31, 1997 ("minimum safety standards for unoccupied and unsafe manufactured housing [established by the city] would not interfere with any authority [the department] currently has in its regulation of mobile homes and manufactured housing").

eschews regulation of manufactured housing transactions. The city may always err on the side of caution and submit proposed standards to the department for approval.<sup>16</sup>

With respect to the city's second set of concerns, we are not sure that issues relating to title to a manufactured home would interfere with enforcement of a municipal ordinance regulating the condition of mobile homes and manufactured homes. A municipality is authorized to bring a civil action to enforce an ordinance "relating to the preservation of public health or to the fire safety of a building or other structure or improvement" or "relating to dangerously damaged or deteriorated structures or improvements."<sup>17</sup> In addition, a municipality is also authorized to order the repair, removal, or demolition of a building or "structure" its governing body finds "is likely to endanger persons or property."<sup>18</sup> If it concludes that existing enforcement mechanisms are insufficient with respect to mobile homes or manufactured housing, the city might consider working to introduce legislation, particularly in light of the approaching legislative session.

### S U M M A R Y

Article 5221f, V.T.C.S., does not preclude a home-rule city from regulating unoccupied and unsafe mobile homes and manufactured homes that pose a threat to public health and welfare.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

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<sup>16</sup>V.T.C.S. art. 5221f, § 4(a), (g).

<sup>17</sup>Local Gov't Code § 54.012(2), (6).

<sup>18</sup>*Id.* § 214.002.