August 27, 2018

Attorney General Ken Paxton
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711

Re: Request for Attorney General Opinion

Dear Attorney General Paxton:

Please accept this letter as a request for an Attorney General Opinion with respect to the following legal questions:

1. Whether it is permissible for a city to impose fees and fines on an unincorporated area within the city's extra-territorial jurisdiction within five miles of a military base as part of the regulations suggested by a Joint Land Use Study?

2. Whether San Antonio's proposed annexation ballot language articulated below meets the standard of definiteness and certainty set forth by the Texas Supreme Court in *Reynolds Land &Cattle Co. v. McCabe*, 12 S.W. 165 (Tex.1888)?

I submit the following regarding this issue for your consideration:

During the first special session of the 85th Legislature, my colleagues and I passed Senate Bill 6 into law to provide registered voters living in unincorporated areas the opportunity to vote on proposed municipal annexations. SB 6 applied to municipal annexation efforts in all counties with a population greater than 500,000 and to counties that petition for the right to vote in counties with a population of less than 500,000. An amendment added in the House of Representatives provided that any land within five miles of an active military base that voted against a proposed annexation gave the municipality the right to enact land use regulations on that land in accordance with the recommendations of the most recent Joint Land Use Study. A Joint Land Use Study is the resulting report of a cooperative planning effort conducted as a joint venture between an active military insulations and surrounding jurisdictions.

Capitol Office:
Room 3E.8
P.O. Box 12068
Austin, Texas 78711
(512) 463-0125
Fax: (512) 463-7794

On August 2, 2018, the San Antonio City Council brought up the issue of the potential annexation of two separate parcels of land adjacent to Camp Bullis and Lackland Air Force Base, respectively. As Bexar County has a population of greater than 500,000, any proposed annexations must be submitted to the voters for their approval. However, the city also had a plan should the voters fail to approve the proposed annexation. Included in those plans for land regulations are fees paid to the city by residents of what will still be unincorporated land in Bexar County.

The legislation as drafted and enrolled only grants the city the ability to "adopt and enforce an ordinance regulating the land use in the area in the manner recommended by the most recent joint land use study." The language of the legislation only speaks to land use regulations and does not explicitly grant the city the ability to impose fees on residents in an unincorporated area. This request is seeking guidance to determine if the explicit rejection of municipal annexation by voters can still authorize the city to impose fees and fines on them. In other words, can residents living in an unincorporated area who specifically voted against annexation of their property somehow still be subject to fines and fees proposed by the City of San Antonio?

In the resolution adopted at the August 2nd meeting, the Council also adopted the ballot language and explanations. The question arises from the explanation of what a vote against the proposed annexation would mean. The relevant portion from the resolution is copied below:

"An "AGAINST" vote would not allow annexation, but permits the City to adopt and enforce ordinances regulating land use in the manner recommended by the most recent Joint Land Use Study, including the authority to adopt and impose fees, fines and other applicable charges."

"An AGAINST vote…permits" has got to be one of the strangest phrases to try to explain to the citizens what their vote actually does or means. In addition, at the August 2 meeting of the San Antonio City Council, the council adopted ballot language for the proposed annexation initiative. In 1888, the Texas Supreme Court opined in *Reynolds Land &Cattle v. McCabe*, 12 S.W. 165 (Tex.1888) that all ballot measures "must substantially submit the question…with such definiteness and certainty that voters are not misled." The question being posed to voters is whether they want to become taxpaying residents of the City of San Antonio governed by its ordinances. However, that is not the question the city has submitted or even comes close to asking on the ballot, instead focusing heavily on the boundaries of military bases and the question of applying health and safety ordinances around military bases. I am concerned that such ballot language is misleading and does not meet this legal standard.

The ballot language for the proposed annexation of land around Camp Bullis is reproduced below:

PROPOSITION NO. 1

SHALL THE CITY OF SAN ANTONIO ANNEX FOR LIMITED PURPOSES CERTAIN AREAS IN THE CITY'S EXTRATERRITORIAL JURISDICTION LOCATED WITHIN FIVE MILES OF THE BOUNDARY OF CAMP BULLIS AND CAMP STANLEY MILITARY BASES FOR THE PURPOSE OF APPLYING ITS PLANNING, ZONING, HEALTH, AND SAFETY ORDINANCES AROUND THE MILITARY BASES.

The ballot language for the proposed annexation of land around Lackland Air Force Bases is also reproduced below:

PROPOSITION NO. 1

SHALL THE CITY OF SAN ANTONIO ANNEX FOR LIMITED PURPOSES CERTAIN AREAS IN THE CITY'S EXTRATERRITORIAL JURISDICTION WITHIN FIVE MILES OF THE BOUNDARY OF THE LACKLAND AIR FORCE BASE AND THE LACKLAND AIR FORCE BASE – MEDINA TRAINING ANNEX FOR THE PURPOSE OF APPLYING ITS PLANNING, ZONING, HEALTH, AND SAFETY ORDINANCES AROUND THE MILITARY BASES.

These legal questions deserve clarity for the benefit of those citizens being asked to vote on such an important issue as who will govern them. Thank you for consideration of this request. Please feel free to contact my office should you need any additional information or details regarding this request.

Sincerely,

Senator Donna Campbell, M.D.
Chair, Veterans Affairs and Border Security
Texas Senate District 25