



Legislative UPDATE

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Number 47

Did Your City Receive a Letter from Mayes Middleton?

Many, if not all, Texas mayors are receiving letters from State Representative Mayes Middleton (R - Wallisville) relating to lobby expenditures. Based on numerous questions received by the TML Legal Department about how to respond to the letter, the League's best advice is to treat the letter as an open records request and take the following two actions:

- Send any contracts the city has signed with lobbyists from January 1, 2010 to the present. An argument can be made that the nature of the request only applies to cities that have engaged in certain consulting contracts with state agencies. However, that is not the only interpretation of the request, and furthermore the representative would be within his legal rights to follow up with a blanket open records request for all lobby contracts irrespective of whether the city has engaged in state consulting contracts. Thus, the easiest course is to send any lobby contracts executed since 2010 and be done with it. Your city attorney may disagree with this advice, and you should follow your attorney's advice.

What about the member service fees you pay to TML? TML does not have a written contract with your city, meaning that the city does not maintain information regarding its TML membership that is responsive to Representative Middleton's request.

- Send all conflicts questionnaires received by the city from any vendors (a "form 1295") since June 19 of this year.

Please consider sharing anything you send to his office regarding lobby contracts with the League by emailing it to legislative@tml.org. If you have further questions please contact Bill Longley, TML Legislative Counsel, at bill@tml.org or (512) 231-7400.

Voluntary Annexation, State Highways, and County Roads: **A Legislative Roadblock?**

If your city conducts voluntary annexations, you should be aware of an issue related to the 2017 and 2019 annexation reform bills. The bills may affect your ability to annex across a county road or state highway. House Bill 347 from last session eliminated unilateral annexation by any city. (S.B. 6 from 2017 had already done that for cities in the largest counties.) The law still allows for annexation at the request of a property owner.

Property to be annexed must be in a city's extraterritorial jurisdiction and must touch the existing city limits. (Many agree that no "islands" of municipal territory are allowed even considering the recent legislative changes.) A petitioner's property lying on the other side of a state highway or county road from the existing city limits is very common.

For over a century, that's never been a problem. A home rule city could have included the road pursuant to the unilateral annexation authority granted by its charter, and a general law city had a statute allowing it to include the road. That authority no longer exists.

Here's the Texas Local Government Code provision that provides the only remaining authority for a city to cross a road:

Sec. 43.1055. ANNEXATION OF ROADS AND RIGHTS-OF-WAY. Notwithstanding any other law, a municipality may by ordinance annex a road or the right-of-way of a road on request of the owner of the road or right-of-way or the governing body of the political subdivision that maintains the road or right-of-way under the procedures prescribed by Subchapter C-1. [Editor's note: Subchapter C-1 requires a traditional notice, hearing, and service plan annexation process.]

County commissioners, in most cases, shouldn't have a problem petitioning a city. They have nothing to lose, and in fact may gain municipal maintenance of the road following the annexation. Whether they will do so is largely a political question.

State highway annexation is another issue altogether. The Texas Transportation Commission oversees the state highway system, and Texas Department of Transportation legal staff has advised that the commission doesn't have the authority to petition a city to include a state highway in its boundaries. That would seem to foreclose the voluntary annexation of any property that lies "across the street."

League staff met with TxDOT this week to confirm the above. A minor legislative change in 2020 may be the best way to go to fix the problem. In the meantime, city officials should consult with local legal counsel about the issue prior to annexing.

Contact Scott Houston, TML General Counsel, at shouston@tml.org with questions or comments.

Texas Water Development Board: **New Flood Financial Assistance Funding Proposed Rules**

On November 29, 2019, the Texas Water Development Board (TWDB) published, for review and comment, a [proposed rule](#) related to the funding of flood control, drainage, and mitigation projects, including the prioritization of projects to be funded, eligible use of funds, terms of financial assistance, and application requirements.

This proposed rule is in response to Proposition 8, approved by voters in November 2019, which created the Flood Infrastructure Fund (FIF) to assist in the financing of drainage, flood mitigation, and flood control projects. In conjunction with the constitutional amendment, the legislature made a one-time transfer of \$793 million from the “Rainy Day” Fund to the FIF through S.B. 7 and S.B. 500, which outline uses of the FIF and create the Texas Infrastructure Resiliency Fund.

TWDB has also released a proposed Flood Intended Use Plan (Flood IUP) that outlines the timeline and structure of the project solicitation for the state fiscal year 2020 prioritization. Additional information about the proposed rule and the Flood IUP is available [here](#).

TWDB will be accepting comments on this rulemaking until January 13, 2020.

City Officials Seeking Higher Office

The start of the 87th Legislative Session is still over a year away, but the field of candidates running for state legislative office has been set. An interesting note this election cycle is the number of current and former city officials who are running for higher office. We applaud all of you who have chosen to continue your public service at the state level. Thank you for serving your communities!

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