



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2021

The Honorable Dee Hobbs
Williamson County Attorney
405 M.L.K. Street, #7
Georgetown, Texas 78626

Opinion No. KP-0368

Re: Authority of a county attorney to file suit to enjoin a violation of a restriction contained in a properly recorded plat of property within the county (RQ-0403-KP)

Dear Mr. Hobbs:

You ask whether a county attorney may file suit to enjoin a municipality's use of property in violation of a plat restriction "regardless of whether a formal complaint has been filed" with your office.¹

Background

You explain that the Austin City Council authorized the City of Austin ("City") to purchase a hotel property ("the Property") located in Williamson County ("County"). Request Letter at 2. You further explain that the City intends to use the Property as a long-term residential facility for the homeless. *Id.* You tell us the Property is currently zoned as "community commercial" and that the plat for the Property, approved by the City and recorded in 2004, includes a use restriction stating: "Development of this subdivision is restricted to uses other than residential." *Id.* at 2–3. Given this plat restriction prohibiting residential use of the Property, you question whether the County may sue to enforce the plat restriction as recorded by enjoining residential use of the property. *Id.* at 1.

Chapter 203 of the Property Code

Chapter 203 of the Property Code authorizes certain county attorneys to enforce land use restrictions, including those in a properly recorded plat. Subsection 203.003(a) provides:

The county attorney may sue in a court of competent jurisdiction to enjoin or abate violations of a restriction contained or incorporated

¹Letter from Honorable Dee Hobbs, Williamson Cnty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 3–4 (Apr. 8, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0403KP.pdf> ("Request Letter").

by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded.

TEX. PROP. CODE § 203.003(a).² The Legislature defined the term “restriction” in this context to include “a limitation that affects the use to which real property may be put.” *Id.* § 203.002. Subsection 203.003(a) therefore authorizes the county attorney to sue to enjoin a violation of a plat restriction prohibiting the use of property for residential purposes.

You specifically ask whether the authority granted pursuant to subsection 203.003(a) exists regardless of whether a formal complaint is filed with your office. Request Letter at 3–4. Read in isolation, section 203.003 makes no mention of a complaint process, but other sections in chapter 203 suggest that the county attorney may utilize the authority granted in subsection 203.003(a) on behalf of a complainant. Section 203.004(a) provides that a “complaint filed in connection with Section 203.003 must be accompanied by an administrative fee prescribed by the county commissioners court.” TEX. PROP. CODE § 203.004(a).³ Thus, chapter 203 contemplates a procedure by which an individual may complain to the county attorney regarding another’s violation of a land use restriction, and the county attorney may choose to sue to enforce the restriction based on that complaint. That said, nothing in chapter 203 expressly requires a filed complaint before the county attorney exercises the authority under section 203.003.

The language chosen by the Legislature in subsection 203.003(a) grants the county attorney authority to independently sue to enforce a plat restriction, without the necessity of a filed complaint. Texas courts have recognized that a political subdivision’s enforcement of land use restrictions may serve a public purpose. *See, e.g., Young v. City of Houston*, 756 S.W.2d 813, 814–15 (Tex. App.—Houston [1st Dist.] 1988, writ denied) (upholding municipal enforcement of private deed restrictions against a challenge that it violated Texas Constitution article III, section 52’s prohibition against using public funds for private purposes). A county may have its own valid reasons, independent of a private landowner, for enforcing properly recorded plat restrictions. Thus, a county attorney possesses authority to sue to enjoin a violation of a plat restriction, independent from and regardless of whether a complaint was filed with the county attorney to initiate the lawsuit.

²The authority applies “only to a county with a population of more than 200,000.” TEX. PROP. CODE § 203.001. You advise that Williamson County has a population of more than 200,000. Request Letter at 2.

³If the court costs and attorney’s fees awarded to the county, together with the administrative fee collected under section 203.004, exceed the county’s expenses in a successful action under chapter 203, any portion of the excess that does not exceed the amount of the administrative fee collected by the county shall be refunded to the complainant. TEX. PROP. CODE § 203.005(b).

S U M M A R Y

Subsection 203.003(a) of the Property Code authorizes a county attorney to sue to enjoin or abate violations of a restriction contained in a properly recorded plat affecting a real property subdivision located in the county. The authority granted exists independent from and regardless of whether a complaint was filed with the county attorney to initiate the lawsuit.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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