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COMMITTEE:  
CHAIR, APPROPRIATIONS

FILE # ML-48367-18

District 28

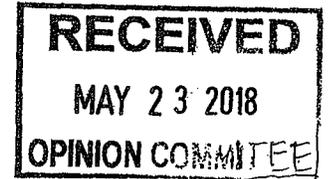
RQ-0233-KP

I.D. # 48367

TEXAS HOUSE OF REPRESENTATIVES

May 23, 2018

The Honorable Ken Paxton  
ATTN: Opinion Committee-Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711



Re: Whether the City of Fulshear City Council conducts business as required by their Home Rule Charter, specifically related to what constitutes a quorum and when a member is considered absent.

Dear Attorney General Paxton:

I am writing to seek your opinion regarding two issues related to whether the City of Fulshear City Council has violated its Home Rule Charter.

By way of background, the Fulshear Home Rule Charter<sup>1</sup> was adopted on May 7, 2016. The City of Fulshear was originally incorporated in 1977 as a general law city. Fulshear has a "council-manager" form of government and has a six-member city council that regularly meets every third Tuesday of the month.

On April 17, 2018, the City Council met for its regularly scheduled meeting; of the six council members, 4 were present (one was absent, one seat was vacant due to resignation). During a vote on Item F (Agenda Section X), "*Consideration and Approval of a Settlement with GM Equity Relative to the Development Known as the Ginter Tract*," one of the four recused herself due to a filed conflict of interest, and the item passed by a vote of 3-0.<sup>2</sup>

The Fulshear Home Rule Charter, Article III, Section 3.09, Subsection (c) states:

*Unless otherwise provided by this Charter or other law, each vote, order, decision, or other action taken by the City Council shall require the affirmative vote of a*

<sup>1</sup> The City of Fulshear, Texas Home Rule Charter. (2016, May 7). Retrieved from <http://www.fulsheartexas.gov/City%20Manager/Home%20Rule%20Charter/CoF%20Ord.%202016-1216%20-%20May%202017.%202016%20publisher%20affd%20and%20letter%20for%20secretary....pdf>

<sup>2</sup> City of Fulshear City Council. (2018, April 17). *Regular City Council Meeting*. Retrieved from [http://www.fulsheartexas.gov/City%20Secretary/Meeting%20Documentation/City%20Council/Minutes/April%2017.%202018%20\(Regular\).pdf](http://www.fulsheartexas.gov/City%20Secretary/Meeting%20Documentation/City%20Council/Minutes/April%2017.%202018%20(Regular).pdf)



*majority of the full City Council, provided that any abstention not required by law shall be counted as a vote against the matter under consideration, and provided that the Mayor shall have the right to cast the deciding vote in the case of a tie, but shall not otherwise have any right, power, or authority to vote against or veto any action taken by the City Council.*

*For purposes of this subsection, a majority shall mean an integer greater than one-half of the full City Council, provided that any one or more Council Members required by law to abstain from voting on a particular matter shall be excluded for purposes of determining the majority.*

My question is whether the vote on April 17, 2018 violated Article III, Section 3.09, Subsection (c) of the Home Rule Charter, and whether the vote should be considered valid.

My second question relates to the same meeting on April 17th, specifically relating to the absent councilmember. He previously notified the city that he would be absent due to being out of state for work, and this was his third consecutive absence.<sup>3 4 5</sup>

The Fulshear Home Rule Charter, Article III, Section 3.10, Subsection (d) states:

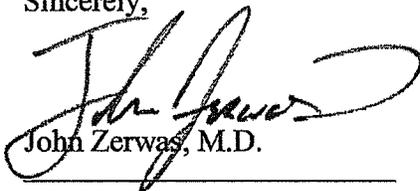
*If the Mayor or a Council Member is absent for three (3) consecutive regular meetings, then the Mayor's or Council Member's office, as applicable, is considered vacant unless:*

- (1) They are sick and the absence is excused afterward; or*
- (2) They have first obtained a leave of absence at a regular meeting.*

The City Attorney ruled that the absent councilmember was absent at the conclusion of the meeting, not at the beginning of the meeting. My questions are whether the seat should be considered vacant, as this was the third consecutive regular meeting missed, and whether his notification to the city the day of the meeting would require the council to consider him absent at the beginning of the meeting.

If I may provide any additional information to assist you with your consideration of this opinion request, please let me know.

Sincerely,



John Zerwas, M.D.

<sup>3</sup> Ibid.

<sup>4</sup>City of Fulshear City Council. (2018, February 20). *Regular City Council Meeting*. Retrieved from [http://www.fulsheartexas.gov/City%20Secretary/Meeting%20Documentation/City%20Council/Minutes/February%2020.%202018%20\(Regular\).pdf](http://www.fulsheartexas.gov/City%20Secretary/Meeting%20Documentation/City%20Council/Minutes/February%2020.%202018%20(Regular).pdf)

<sup>5</sup>City of Fulshear City Council. (2018, March 29). *Regular City Council Meeting*. Retrieved from [http://www.fulsheartexas.gov/City%20Secretary/Meeting%20Documentation/City%20Council/Minutes/March%2020.%202018%20\(Regular\).pdf](http://www.fulsheartexas.gov/City%20Secretary/Meeting%20Documentation/City%20Council/Minutes/March%2020.%202018%20(Regular).pdf)