



**JOHNSON COUNTY**  
**BILL MOORE**  
**COUNTY ATTORNEY**

May 13, 2019

**RQ-0289-KP**

Honorable Ken Paxton  
Attorney General of Texas  
Office of the Attorney General  
Attention Opinion Committee  
*Submitted Via email:* [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

FILE # ML-48557-19  
I.D. # 48557

RE: Request for Opinion: Applicability of Texas Local Government Code Section 43.106 to  
"Voluntary Annexation" Pursuant to Texas Local Government Code Section 43.028

Summary of Questions Presented:

- 1) Does Texas Local Government Code Section 43.106 apply to all annexations, including those initiated under Section 43.028?
- 2) If Section 43.106 does apply, what remedies are available to the County to enforce those provisions?

Honorable General Paxton:

Johnson County is located just south of Tarrant County and southwest of Dallas County. As this area experiences rapid growth, developers are purchasing large tracts of undeveloped property in unincorporated areas of the County and requesting annexation from a neighboring municipality. This process, authorized by Texas Local Government Code § 43.028, is frequently referred to as "voluntary annexation."

Because these tracts of land are in unincorporated areas, they frequently abut or adjoin county roads. Texas Local Government Code § 43.106 provides the following:

- (a) A municipality that proposes to annex any portion of a county road or territory that abuts a county road must also annex the entire width of the county road and the adjacent right-of-way on both sides of the county road.

Therefore, it is the County's position that a municipality annexing property that abuts a county road must also annex the entire roadway and attendant right-of-way. It is the County's position that the County Attorney has the authority to initiate quo warranto proceedings against a

municipality that fails to comply with these provisions as well as to seek other remedies at law or equity that may apply.

While some of the municipalities in Johnson County have complied with this provision, one municipality (“the City”) has attempted to draw a distinction between voluntary annexation and involuntary annexation.<sup>1</sup> The City contends that this Section does not apply to voluntary annexations because the process is begun by a landowner instead of the City. However, in all annexations, the City ultimately has final authority over whether or not property will be annexed. A landowner cannot force the City to annex him. Regardless of who initiates the annexation process, the City is the entity effecting the annexation. In an effort to ensure uniform rules for all municipalities in Johnson County, the County is submitting this Request for Opinion. The resolution of this issue turns upon the interpretation of a statute and is within the purview of the Office of the Attorney General.

The County has conducted legal research in an attempt to resolve this issue, but this appears to be an issue of first impression. The operative language in Section 43.106 was added by HB 1949, 84<sup>th</sup> Leg., in 2015, and does not appear to have been litigated since that time. In support of its contentions, the County submits the information below.

The plain language of Section 43.106 requires a “municipality that proposes to annex any portion of a county road or territory that abuts a county road” to annex the entire width of the road along with the right-of-way. Contrary to the City’s interpretation, the plain language of the statute does not limit its application to involuntary annexations.

Further, the legislative history of the statute supports the County’s interpretation. The Editor’s Notes to Section 43.106 were revised in 2015, when the operative language in this statute was added. The revision removed a limitation making the statute applicable only to annexations governed by Local Government Code § 43.052.<sup>2</sup> That limiting language was replaced with the following language:

SECTION 3. Section 43.106, Local Government Code, as amended by this Act, applies to an area proposed for annexation on or after the effective date of this Act or before the effective date of this Act if the statutory requirements for annexation under Subchapter C or C-1, Chapter 43, Local Government Code, have not been completed before the effective date of this Act.<sup>3</sup>

None of the limitations included in this note apply to the annexations implicated by this Request. The County contends that this Note supports its interpretation of Section 43.106.

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<sup>1</sup> As the term is used here, involuntary annexation refers to any annexation that is initiated by the municipality rather than by the landowner

<sup>2</sup> That section refers to Municipal Annexation Plans

<sup>3</sup> ANNEXATION OF CERTAIN ROADS AND AREAS ADJACENT TO THOSE ROADS, 2015 Tex. Sess. Law Serv. Ch. 1052 (H.B. 1949) (VERNON’S)

Furthermore, the public policy behind Section 43.106 supports the County's interpretation. The City contends that it can annex property with no obligation to annexing abutting roads as long as the annexation is voluntary. Taken to its logical conclusion, this could result in the County being required to maintain roadways that are wholly surrounded by property within the City's corporate limits. Alternatively, if the City annexed some property voluntarily and some property involuntarily, the result would be alternating sections of roadway maintain by different local governments. This is precisely the situation Section 43.106 is intended to prevent. Conversely, the County's interpretation gives full effect to the Legislature's intent by requiring municipalities who want to grow to take on the responsibility of maintaining the roads that make that growth possible.

Assuming the County is correct that Section 43.106 applies to all annexations, the County contends that it may seek to enforce the provisions of that Section in an action for quo warranto and/or in a suit for declaratory judgment. The Johnson County Attorney has the authority to bring a suit for quo warranto to set aside an annexation that is voidable under Chapter 66 of the Texas Civil Practice and Remedies Code. The County contends that an action in the nature of quo warranto would be appropriate to set aside an annexation that failed to comply with Texas Local Government Code § 43.106.

Further, the County contends that a declaratory judgment action would be appropriate to determine the rights of the City and the County under the statutes cited in this request as well as the municipal ordinances approving the annexations in question, as provided in Chapter 37 of the Texas Civil Practice and Remedies Code. Courts have typically permitted challenges to annexations to proceed under either, or both, provisions, depending on the circumstances.<sup>4</sup>

Thank you for your time and attention to this matter. We appreciate your guidance on this matter.

Sincerely,



Bill Moore  
County Attorney, Johnson County

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<sup>4</sup> See e.g. *Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 377 (Tex. 2006); *Alexander Oil Co. v. City of Seguin*, 825 S.W.2d 434, 436-37 (Tex. 1991); *City of W. Lake Hills v. State ex rel. City of Austin*, 466 S.W.2d 722, 727 (Tex. 1971); *City of Missouri City v. State ex rel. City of Alvin*, 123 S.W.3d 606, 618 (Tex. App.—Houston [14th Dist.] 2003, pet. denied); *City of Bridge City v. State ex rel. City of Port Arthur*, 792 S.W.2d 217, 228 (Tex. App.—Beaumont 1990, writ denied)