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September 13, 1990

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**The Honorable Bob Bullock
Comptroller of Public Accounts
LBJ State Office Building
Austin, Texas 78774**

Election Law Opinion GSB-4

Re: Whether, by virtue of consolidation elections held pursuant to Chapter 61 of the Texas Local Government Code, the entire City of Fair Oaks Ranch is included in the VIA Metropolitan Transit Authority.

Dear Mr. Bullock:

By letter of July 9, 1990, together with the May 14, 1990, letter to you from Mr. Howard D. Bye, counsel for the VIA Metropolitan Transit Authority ("VIA"), you requested my opinion, as chief election officer of the State of Texas, and asked if the entire City of Fair Oaks Ranch ("City") is included in VIA.

The former cities of Fair Oaks Ranch South ("City South") and Fair Oaks Ranch North ("City North") were both incorporated in 1987. Consolidation elections held pursuant to Chapter 61 of the Texas Local Government Code ("Code") on November 3, 1987, in City North and on January 16, 1988, in City South resulted in the creation of the current City. Prior to consolidation, City South was located entirely in Bexar County, whereas City North was located in portions of Bexar, Comal, and Kendall Counties. The land within the boundaries of City South is in the VIA service area by virtue of its being part of the unincorporated area of Bexar County which became part of VIA in a 1980 election. Your office has previously recognized that, once voters residing in an unincorporated area of a county vote to become

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a part of VIA, the area remains in VIA's service area even if the unincorporated area subsequently is incorporated or is annexed to a city which is not a part of VIA. For this reason, the portion of City North that is located in Bexar County is also part of the VIA service area.

The question posed to me is, therefore, as follows: Is the area of the City located in Comal and Kendall Counties a part of VIA as a result of the 1987 and 1988 consolidation elections?

The statute governing VIA is Article 1118x, Texas Civil Statutes. Section 6A of that article establishes a mechanism whereby territory may be added to a metropolitan transit authority. Section 6A provides, in pertinent part, as follows:

- (a) Territory may be added to an authority only according to the provisions of this section.

- (b) The governing body of any incorporated city or town located in whole or in part within either a county in which any portion of the authority territory is situated or a county adjacent to a county in which any portion of the authority territory is situated may hold an election on the question of whether the city or town shall be annexed to the authority. If a majority of the qualified voters in the city or town votes for annexation, the governing body shall . . . become a part of the authority. . . .

. . . .

- (d) If a city or town which is a part of an authority lawfully annexes additional territory which is not a part of the authority, the annexed territory becomes a part of the authority.

. . . .

- (f) Territory in which an election is held as provided in Subsection[] (b) . . . of this section becomes a part of the authority on the 31st day after the election (Emphasis added.)

An election for consolidation (pursuant to Chapter 61 of the Code) and an election for annexation (pursuant to Chapter 43 of the Code) are distinct and separate procedures. Section 6A(b) of Article 1118x requires an election on the question of whether the city shall be annexed to VIA. The propositions on the ballots at the 1987 and 1988 consolidation elections of City North and City South were whether the voters of those

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cities were for or against "Consolidation with Fair Oaks Ranch (South or North, as appropriate)", not whether either City North or City South should be annexed to VIA, as required by the plain language of Section 6A(b).

I note that Mr. Bye in his letter admits that consolidation is not specifically addressed in Article 1118x, but contends that the effect of consolidation is, practically and substantially, the same as that of annexation. No Texas cases are cited in support of this contention.

I must respectfully disagree with the view that annexation and consolidation are, in effect, one and the same.

As mentioned earlier in this letter, annexation and consolidation elections are governed by two separate and distinct portions of the Code (Chapters 43 and 61, respectively).

Section 61.008 of the Code, dealing with the effect of a consolidation election, provides:

In a consolidation under this chapter, the smaller municipalities:

- (1) adopt the charter, ordinances, and, unless otherwise provided at the time of consolidation, the name of the largest municipalities;
- (2) are included in the territory of the largest municipality; and
- (3) are subject to the laws and regulations of the largest municipality.
(Emphasis added.)

Section 61.008(c) does not provide that consolidated cities are subject to the laws or regulations of another political subdivision, such as VIA.

It is apparent that Section 6A(d) speaks only to annexation, and not to consolidation, as the mechanism whereby a city's territory may be added to a metropolitan transit authority.

I would point out that, should the residents in the portion of the City encompassing land in Comal and Kendall Counties wish to join VIA, they are free to utilize the statutory mechanisms provided in Sections 6A(b) or (c) of Article 1118x.

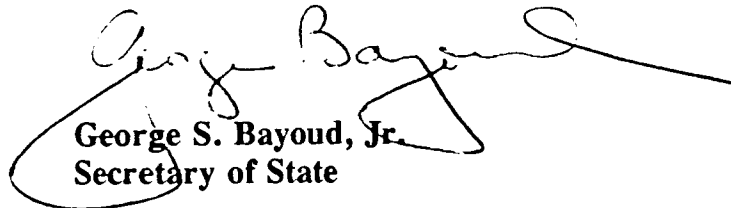
Based on the foregoing, you are advised that the area of the City of Fair Oaks Ranch located in Comal and Kendall Counties is not a part of the VIA Metropolitan Transit Authority.

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SUMMARY

Section 6A(b) of Article 1118x, Texas Civil Statutes, which governs the VIA Metropolitan Transit Authority ("VIA"), requires an election on the question of whether a city may be annexed to VIA. A consolidation election held pursuant to Chapter 61 of the Texas Local Government Code is a separate and distinct type of election, and does not result in a city's being annexed to VIA. Annexation, and not consolidation, is the only mechanism whereby a city's territory may be added to VIA. The area of the City of Fair Oaks Ranch located in Comal and Kendall Counties is not a part of the VIA Metropolitan Transit Authority.

Sincerely,



George S. Bayoud, Jr.
Secretary of State

Pete Wassdorf
Assistant Secretary of State

Prepared by Austin C. Bray, Jr.
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**APPROVED:
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GSB:TH/ab/im