March 25, 2020

To: All Elected and Appointed State Officials, Executive Directors, Board Members, and Agency Officers

Our office has received numerous questions about the extent to which State agencies, State officials, and State agents may be impacted by disaster declarations and orders issued by political subdivisions that restrict the movement of persons and the operation of businesses within their respective jurisdictions. We conclude that political subdivisions may not restrict the ability of any State agency, State agent or State contractor to provide governmental services.

On March 13, 2020, Governor Abbott declared a state of disaster in all Texas counties in response to the novel coronavirus disease 2019 (COVID-19), authorizing the use of all available State and local resources that are reasonably necessary to cope with the disaster. The Governor of the State Texas, Proclamation of March 13, 2020. Subsequently, Governor Abbott issued an executive order to further mitigate the spread of COVID-19. Executive Order GA-08 (Mar. 19, 2020). Importantly, this order provided that "[a]ll critical infrastructure will remain operational, and *government entities* and businesses will continue providing essential services." *Id.* at 2 (emphasis added).

Questions about continuing operations of State government have arisen because various political subdivisions have declared local states of disaster and issued related orders restricting the movement of persons and the operation of businesses and entities located within their jurisdictions. These declarations and orders are not uniform in their purported application: some expressly recognize that the local orders do not purport to control the operations of the State or Federal Governments, whereas others do not contain such express exemptions.

The Texas Disaster Act of 1975 authorizes the Governor to declare a state of disaster if a disaster has occurred or the threat or occurrence of a disaster is imminent. Tex. Gov't Code § 418.014(a). A declaration by the Governor activates the State's emergency management plans and authorizes the use of any necessary forces and emergency supplies. *Id.* § 418.015(a). In addition, the Governor may use all available resources of the State and of any political subdivision that are reasonably necessary to respond to the disaster and may control access to and the movement of people and occupancy of premises within a disaster area. *Id.* §§ 418.017(a), .018(c).

Likewise, the Act authorizes the presiding officer of the governing body of a political subdivision to declare a local state of disaster. *Id.* § 418.108(a). A declaration by the local officer activates the applicable local emergency response plans. *Id.* § 418.108(d). Like the Governor, local officers may also control access to and the movement of people and occupancy of premises within a disaster area. *Id.* § 418.108(g). Yet, unlike the Governor's authority, local officers may only exercise authority in an "area under the jurisdiction and authority of" the officer. *Id.*
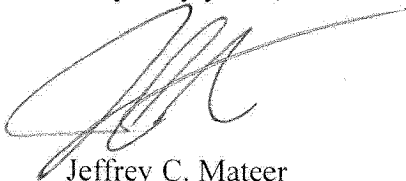
As a general matter, the State, its agencies and its property are not under the jurisdiction and authority of a local officer under section 418.108. The State of Texas is a free and sovereign state, subject only to the United States and Texas Constitutions. *See* Tex. Const. art. I, § 1. Conversely, local governments derive their existence and power from the State and are confined to regulating only as consistent with the State Constitution and laws. *See id.* art. XI, § 5 (providing that no ordinance shall be inconsistent with the Constitution or general laws of the State); Tex. Gov't Code §§ 51.012, .032 (providing that municipal ordinances may not be inconsistent with state law); *City of Laredo, Tex. v. Laredo Merchants Assoc.*, 550 S.W.3d 586, 592 (Tex. 2018) (same).

Local authority to control the movement of people and the occupancy of premises under local states of disaster are expressly limited to those areas "under the jurisdiction and authority of" the local officer. Tex. Gov't Code § 418.108(g). As agents of the State, local governments lack authority to control the State and its agencies. *See e.g.*, Tex. Att'y Gen. Ops. JM-117 (1983) at 2–3 (concerning building and zoning ordinances), MW-508 (1982) at 4–5 (concerning city fire codes), M-182 (1968) at 2 (concerning municipal building permits); *see also* Tex. Gov't Code § 211.013(c) (excluding property owned or controlled by the state or federal government from zoning regulations). Moreover, the State does not subject itself to local regulation simply by granting authority to local governments to regulate. *See* Tex. Att'y Gen. Op. M-182 (1968) at 2. Because the State and its agencies and property are not under the jurisdiction or authority of local officials for purposes of section 418.108, local action under that provision cannot circumscribe State functions.

Nor does the Constitution allow local actions to impair the obligation of State contracts. *See* Tex. Const. art. I, § 16. Where, as here, fulfilling State functions may include utilizing the services of State contractors, the Constitution expressly prohibits enacting any law—state or local—that impairs that right.

Furthermore, under the Act Governor Abbott "may issue executive orders, proclamations, and regulations and amend or rescind them." Tex. Gov't Code § 418.012. These orders, proclamations, and regulations "have the force and effect of law." *Id.* As such, they constitute general laws of the State. And because local governments cannot enact laws that are inconsistent with State law, Governor Abbott's orders operate to limit local authority to regulate. *See* Tex. Const. art. XI, § 5; *City of Laredo* 550 S.W.3d at 592. Here, Governor Abbott's order expressly allows government entities to continue performing essential services. Because his order carries the force and effect of law, it supersedes local action to the extent of any conflict.

Very truly yours,

Jeffrey C. Mateer
First Assistant Attorney General

2

EX. 103.002