



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 30, 2020

Craig Morgan
Mayor, City of Round Rock, Texas
221 East Main Street
Round Rock, TX 78664

Dear Mayor Morgan and members of the Round Rock City Council:

This letter concerns the City of Round Rock's recent attempt to move its local election from November 3, 2020 to May 2021. Because the City lacks authority to postpone its election under these circumstances, as outlined below, the City should begin preparing to hold its election on November 3, 2020. Should the City fail to do so, the Office of Attorney General will take appropriate action within its authority to ensure the City complies with State law.

Due to the current state of disaster involving COVID-19, the Governor suspended certain provisions in the Election Code to allow local officials to move elections scheduled to be held on May 2, 2020 to November 3, 2020.¹ At its April 9, 2020 meeting, the City council utilized this suspension by passing a resolution to move its May election to November, consistent with the State's efforts to reduce the spread of COVID-19.² But the City is now attempting to move its election again, to May 2021—effectively allowing its elected officials whose terms would have expired in May 2020 to continue to hold office for another full year.³

The Texas Constitution vests home-rule municipalities with the power of self-government, meaning those entities look not to the Legislature for grants of authority

¹ Procl. of Tex. Gov. Greg Abbott (Mar. 18, 2020) (Proclamation), https://gov.texas.gov/uploads/files/press/PROC_COVID-19_May_2_Election_Date_IMAGE_03-18-2020.pdf.

² See *City Council Meeting Minutes*, City of Round Rock, Tex. (Apr. 9, 2020) at 4.

³ See *City Council Meeting Minutes*, City of Round Rock, Tex. (July 9, 2020) at 6 (noting motion "to move the May 2020 General and Special Elections to May 1, 2021" carried by a 6-1 vote).

but only limitations on their authority.⁴ A home-rule municipality is governed by its charter.⁵ And the Constitution prohibits any home-rule charter, or any ordinance adopted thereunder, from containing “any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.”⁶ The adoption and amendment of a charter, moreover, “is subject to such limitations as may be prescribed by the Legislature.”⁷

State law prescribes the dates—also known as uniform election dates—on which elections for local political offices may be held.⁸ Local jurisdictions, subject to their municipal charters, are generally free to choose which uniform election date to use for local elections.⁹ State law also allows for the uniform date of an election to be changed in certain limited circumstances.¹⁰

Relevant here, Election Code section 41.0052 allowed local jurisdictions to move the date of their elections from the May uniform date to the November uniform date prior to December 31, 2016. In response to the COVID-19 pandemic, the Governor suspended the expired deadline in section 41.0052(a) and thereby empowered local jurisdictions that would have held elections on May 2, 2020 to decide whether to move those elections to November 3, 2020.¹¹ In particular, the Governor’s proclamation suspended subsections 41.0052(a) and (b) “to the extent necessary to allow political subdivisions . . . to move their [May 2, 2020] general and special elections . . . to [November 3, 2020].”¹² The Governor did not, however, empower local officials to defer local elections for an entire calendar year, from May 2020 to May 2021.

⁴ Tex. Const. art. XI, § 5(a); Tex. Loc. Gov’t Code § 51.072(a); *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 592 (Tex. 2018) (recognizing a home-rule city ordinance must not “contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State”).

⁵ See Tex. Const. art. XI, § 5(a); Tex. Loc. Gov’t Code §§ 9.001–.008.

⁶ Tex. Const. art. XI, § 5(a).

⁷ *Id.*

⁸ See Tex. Elec. Code § 41.001(a).

⁹ See Tex. Const. art. XI, § 5(a); Tex. Elec. Code §§ 41.001(a), 41.005(b); Tex. Loc. Gov’t Code § 26.042.

¹⁰ Tex. Elec. Code §§ 41.0052(a), (c), & (e).

¹¹ Proclamation at 1.

¹² *Id.*

Notwithstanding the clear text of the Election Code and the Governor’s suspension order, counsel for the City argues that the City must defer its elections to May 2021 because the City charter requires elections to be held on the May uniform date.¹³ The City’s memo fails to account for subsection 41.0052(c) of the Election Code. That subsection, which the Governor did not suspend, allows a home-rule municipality to adopt a resolution changing its May election date to November.¹⁴ Subsection 41.0052(c) further provides that “[t]he change contained in the resolution *supersedes* a city charter provision that requires a different general election date[.]”¹⁵

Although a city resolution would not normally supersede a provision in the city charter—the adoption or amendment of which requires a majority vote of the citizens of the city¹⁶—that is precisely what the plain language of subsection 41.0052(c) allows. The Legislature is permitted to impose limitations on “[t]he adoption or amendment of charters.”¹⁷ By providing that a resolution adopted under subsection 41.0052(c) supersedes a conflicting charter provision, the Legislature has limited the ordinary requirements to amend a city charter.¹⁸ Thus, a resolution adopted under subsection 41.0052(c) supersedes a conflicting charter provision.¹⁹ Accordingly, because the City adopted a resolution moving its election to November 3, 2020, subsection 41.0052(c) applies, and the resolution supersedes the City’s charter to the extent of a conflict.

¹³ See *Legal Memorandum Related to the May 2020 Election*, City of Round Rock, Tex. (July 21, 2020), <https://www.roundrocktexas.gov/wp-content/uploads/2020/07/20200721155807919-1.pdf>.

¹⁴ Tex. Elec. Code § 41.0052(c).

¹⁵ *Id.* (emphasis added).

¹⁶ Tex. Const. art. XI, § 5(a).

¹⁷ *Id.* (providing that “[t]he adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature”).

¹⁸ See *id.* (requiring a majority vote of qualified voters of a home-rule city to adopt or amend a city charter).

¹⁹ The City’s charter requires, moreover, that city elections be “held annually in accordance with . . . Election Code [chapter 41].” Round Rock, Tex., Charter (City Charter), art. V, § 5.01(a), https://library.municode.com/tx/round_rock/codes/code_of_ordinances?nodeId=PTICH_ART5NOEL_S5.01CIEL. By incorporating chapter 41’s requirements, the charter necessarily authorizes actions taken under that chapter. Indeed, the City’s charter requires that “[a]ll City elections shall be governed by the constitution of the state of Texas, general laws of the state, this Charter, and ordinances of the City, *in the order named.*” *Id.* § 5.01(d) (emphasis added).

Furthermore, the City lacks legal authority to move elections validly set for November 3, 2020, to May 2021. Subsection 41.0052 only allows changing a local election date from the May uniform election date to the November uniform election date; it does not permit a change from November to May.²⁰ The provision applies only to cities that hold their elections on “a date other than the November uniform election date”—which includes the City—and provides an option to “change the date on which it holds its general election for officers *to the November uniform election date.*”²¹ The statute does not allow the reverse, and the City cannot rely on it to justify delaying an election required under city charter by an entire calendar year.²²

Nor does the Governor’s proclamation allow such a change. In fact, the Governor’s proclamation suspended these provisions in the Election Code “to the extent necessary to allow political subdivisions . . . to move their [May 2, 2020] general and special elections . . . *only to* [November 3, 2020].”²³ Even if subsection 41.0052(a) of the Election Code could be interpreted to allow the City to postpone its charter-required election to May 2021, the Governor’s proclamation expressly declares that the otherwise-expired statutory deadline for changing an election date is suspended *only* to allow postponement to November 3, 2020, and no later. Thus, nothing in the law or the Governor’s proclamation permits changing the November 3, 2020 election date once the jurisdiction has decided to make the change permitted under subsection 41.0052(a).

In the legal memorandum posted to the City’s website, counsel for the City advises that the City’s home-rule charter permits elections to be held only in May and that

²⁰ See Tex. Elec. Code § 41.0052(a).

²¹ *Id.* (emphasis added).

²² Subsection 41.0052(d) of the Election Code provides that if a political subdivisions changes its election date to the November uniform election date under subsection 41.0052(a), elected officials may serve beyond their terms “so that a term of office may be conformed to a new election date” without triggering a vacancy under Texas Constitution article XI, section 11(b). *Id.* § 41.0052(d). However, subsection 41.0052(a) contemplates only a postponement from May to November, not May to May—an entire calendar year. The Governor’s proclamation reiterates this constraint. See Proclamation at 1 (providing that May 2, 2020 local elections may be moved to November 3, 2020, “without otherwise adjusting the term of office”). Accordingly, the City’s decision to postpone its local elections for an entire year may render subsection 41.0052(d) inapplicable and trigger vacancies for the positions currently up for election on November 3, 2020. See City Charter, art. III, § 3.01 (limiting terms of office for city council members to three years); see also Tex. Const. art. XI, § 5.01(a) (requiring majority vote of qualified voters to amend city charter, subject to limitations prescribed by legislature).

²³ Proclamation at 1 (emphasis added).

the Governor lacks authority to suspend city charters. But the Governor’s proclamation does not suspend the City’s charter; it suspends a state-law deadline to allow political subdivisions to move local elections to the November uniform election date. In reality, the Governor’s proclamation simply provided the Round Rock city council with an alternative option. So it was the council’s decision to make. By voting to postpone its local election to November 3, 2020 in accordance with the Governor’s proclamation, the council—intentionally or unintentionally—invoked subsection 41.0052(c) of the Election Code. Accordingly, it is the resolution passed by city council, not the Governor’s proclamation, that has superseded the City’s charter.

Finally, we note that holding an improper election can produce severe consequences. If an election is held on the wrong date, the election is void.²⁴ If the City decides not to hold its election in November, the City may be subject to civil litigation.²⁵ In addition, violating the City’s charter, such as by not calling an election in accordance with the law, may be grounds for a forfeiture of office.²⁶ Finally, an unlawful officeholder may be removed from office through a *quo warranto* action.²⁷

We trust this letter clarifies the City’s legal obligation to hold its election on the November 3, 2020 uniform election date. Please contact me with any questions concerning this guidance letter.

Sincerely,



KEN PAXTON
Attorney General of Texas

²⁴ Tex. Elec. Code § 41.008.

²⁵ *Yett v. Cook*, 281 S.W. 837, 843 (Tex. 1926) (recognizing Attorney General’s power to sue to compel municipal officers to hold an election).

²⁶ City Charter, art. III, § 3.06(b).

²⁷ See Tex. Civ. Prac. & Rem. Code §§ 66.001–.003; *Toyah Indep. Sch. Dist. v. Pecos-Barstow Consol. Indep. Sch. Dist.*, 491 S.W.2d 455, 456–57 (Tex. Civ. App.—El Paso 1973, writ ref’d n.r.e.) (recognizing that “[q]uo warranto is held to be the exclusive remedy afforded to the public by which it may protect itself against usurpation or unlawful occupancy of a public office by an illegal occupant”), *cert. denied*, 415 U.S. 991 (1974).