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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

The Honorable John Cornyn
Attorney General of Texas
Office of the Attorney General
PO Box 12548
Austin, Texas 78711-2548

FILE # ML-42677-02
I.D. # 42677

2872

Re: Disqualification of Directors under Section 49.052 of the Texas Water Code

Dear General Cornyn:

I am writing to request an opinion on the application of Section 49.052 of the Texas Water Code ("Section 49.052") to a Municipal Utility District (a "MUD") director whose son seeks employment with the company that contracts with the District to serve as Operating Company (the "Operating Company"). While Section 49.052(a)(1) makes clear that relation to certain individuals is grounds for disqualification, it is unclear whether the son's employment with the Operating Company would qualify him as an "other person providing professional services to the district."

Background

The MUD is a conservation and reclamation district created pursuant to the authority of Article XVI, Section 59, of the Texas Constitution, and operates under the provisions of Chapters 49 and 54, Texas Water Code. Section 49.052(a)(1) of the Texas Water Code provides that "[a] person is disqualified from serving as a member of a board of a district . . . if that person is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, attorney, or other persons providing professional services to the district" (emphasis added).

The director in question (the "Director") has a son who seeks employment with the Operating Company. The Operating Company is an independent contractor that contracts with the MUD to operate and maintain the MUD's water and wastewater system. The son seeks entry-level employment with the Operating Company and would be an employee, owning no part, portion, or interest in the Operating Company. Upon employment, however, it is foreseen that the son may be assigned to the MUD in question. Such employment does not seem to provide the type of professional services contemplated by Section 49.052(a)(1), namely that of

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engineers, attorneys, managers, or other professionals. Moreover, Section 49.052(a)(1) does not seem to apply even if the son is promoted but maintains no ownership interest in the Operating Company.

Request for Opinion

I am requesting an opinion on whether under Section 49.052 of the Texas Water Code this Director may continue to serve on the MUD's board of directors if her son obtains employment with the Operating Company since the son's duties do not appear to be the kind of professional services contemplated in Section 49.052(a)(1). If the above question is answered in the negative, would there be a different result if the son were employed by the Operating Company but not assigned to the District? Further, may the Director continue to serve if the son is promoted within the Operating Company but maintains no ownership interest, or is not an office holder, in the Operating Company?

Thank you very much for your attention to this request. Presently, the Director is serving on the MUD Board and, out of an abundance of caution, her son is delaying acceptance of employment, thus forgoing much needed earnings. Therefore, your earliest consideration of this matter would be appreciated. If you have any questions or require any further information, please do not hesitate to contact me at any time.

Sincerely,

A handwritten signature in cursive script that reads "David Counts". The signature is written in black ink and is positioned to the left of the typed name.

David Counts