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The Senate of
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Austin 1871

RECEIVED
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OPINION... DIAL 711 FOR RELAY CALLS

January 03, 2006

FILE # ML-44540-06
I.D. # 44540

The Honorable Greg Abbott
Office of the Attorney General
Opinion Committee
Post Office Box 12548
Austin, TX 78711

RQ-0429-GA

Dear General Abbott:

I am respectfully requesting an attorney general's opinion on a matter concerning the Upper Trinity Regional Water District.

- 1.) Does the Upper Trinity Regional Water District have the authority to adopt a rule (UTRWD Bylaw Rule 2.1[a]) imposing an additional Director qualification requirement beyond those set forth by the Texas Legislature in the Act that established the District?

I have enclosed background information to assist your office in the resolution of this question and will be available to answer any questions you or your office might have on this matter. Thank you for your timely assistance.

Sincerely,

Chris Harris



MEMORANDUM

In Re: Upper Trinity Regional Water District	Question: Whether the Board of the Upper Trinity Regional Water District exceeded its authority in promulgating Section 2.1(a) of its By-Laws relating to Director qualifications.
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The Upper Trinity Regional Water District (“UTRWD” or “District”) was created by an act of the Texas Legislature in 1989. Pursuant to the Act, a Board of Directors was to be established to manage and carry out the enumerated responsibilities of the District. The power to appoint Directors to the Board was expressly given to the governing bodies of the member entities. The power to remove a director also was given to the governing body of the entity that appointed the director, not the District or the Board. Lastly, the Act sets forth the qualifications (i.e., eligibility requirements) that each appointee must meet to serve as a Director on the Board (“A director may not be an elected official of any governmental entity that has the authority to appoint a member of the board.”; “A director must be a qualified voter who resides in the District and must qualify to serve by taking the oath of office and furnishing evidence of the person’s qualifications to serve on the board consistent with this Act.”)

On August 4, 2005, the Board of Directors of the UTRWD voted to follow the recommendation of its counsel to amend Article II of its Bylaws by adopting a provision that reads as follows:

Section 2.1(a) No employee of an entity with the right to make an appointment to the Board of Directors shall be eligible to serve on the Board of Directors as an appointee of a different entity.

Upon the adoption of this Bylaw amendment, the Board and the District effectively removed two duly appointed Board members who met the qualifications imposed by the Act but did not meet the additional qualification imposed by the amendment. The action by the Board and the resulting removal of two duly appointed Directors has given rise to a legal issue regarding the power of the Board to impose Director eligibility requirements or qualifications not found in the Act.