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April 6, 2006

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The Honorable Greg Abbott
Texas Attorney General
Price Daniel Building
Post Office Box 12548
Austin, Texas 78711-2548

RQ-0474-GA

OPINION COMMITTEE

Attention: Opinion Committee

FILE # ML-44729-06

I.D. # 44729

Dear General Abbott:

I am writing to ask your opinion regarding the interpretation of Texas Education Code, Chapter 130, Subchapter D, specifically Sections 130.063, 130.065 and 130.068 which were amended under House Bill 2221 during the 79th Legislature, Regular Session. This request is being made on behalf of Coastal Bend College.

Section 130.063 of the Texas Education Code sets forth the requirements for the annexation of a territory to a junior college district by contract under Section 130.064 or election based upon petition under Section 130.065. Section 130.068 pertains to the extension of boundaries when the election is called by the governing board of the junior college district under limited circumstances.

The questions posed are as follows:

Assume an annexation election is properly called under Section 130.065 of the Texas Education Code for the annexation of multiple school districts and/or multiple counties (i.e. annexation of all the territory located within a district's service area as contemplated under Section 130.068 of the Texas Education Code). Also assume that the measure receives a favorable vote of a majority of those voters voting on the measure in multiple school districts and/or multiple counties; however, it does not receive a favorable vote of a majority of those voters voting on the measure in a single school district or single county. Based upon these assumptions:

1. Can the ballot measure for each school district and/or county pertain to multiple annexations rather than just the single annexation of its school district and/or county?
2. If so, is the county or school district which did not vote in favor of annexation still subject to annexation based on the election outcomes of the other school districts and/or counties?

Greg Abbott
April 6, 2006
Page Two

At our request, Coastal Bend College has provided a letter brief on this issue and that letter is incorporated in this request. Thank you for your attention to this matter. Should you require any additional information, please feel free to contact Jan Greenberg, General Counsel at (512) 427-6143.

Sincerely,



Raymund A. Paredes

Attachment: Letter brief on behalf of Coastal Bend College dated March 23, 2006

cc: Marion E. Williams, Jr., J.D.
Dr. John Brockman, Coastal Bend College
Rep. Vilma Luna

MARION WILLIAMS

ATTORNEY AT LAW
P.O. Drawer 250
BEEVILLE, TEXAS 78104-0250
(361) 358-3710
FAX (361) 358-3745

March 23, 2006

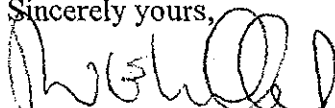
Ms. Jane Greenberg, General Counsel
Texas Higher Education Coordinating Board
P. O. Box 12788
Austin, Texas 78711

RE: Request for Attorney General's Opinion concerning
Education Code

Dear Ms. Greenberg:

Enclosed is my proposed brief to aid you in the submission of a request for an Attorney General's Opinion concerning the above referenced statutes. If you have any questions or you want further briefing in support of the request, please let me know. Thank you very much for your assistance in this matter.

Sincerely yours,



Marion E. Williams, Jr.

MEW/hb

enc.

cc: Dr. John Brockman, President
COASTAL BEND COLLEGE
3800 Charco Road
Beeville, Texas 78102

Misc\CBC AG request

Question presented: Assume the governing board of a junior college district properly orders an election conforming with all of the requirements of Texas Education Code section 130.065 and the territory proposed for annexation consists of multiple school districts and/or multiple counties (for example, if the governing board of the junior college district ordered an election on the question of establishing expanded boundaries for the junior college district to encompass all of the territory located within the district's service area as contemplated by Texas Education Code section 130.068) and further assume that the measure receives a favorable vote of a majority of those voters voting on the measure in the multiple school districts and/or multiple counties but does not receive a favorable vote of a majority of those voters voting on the measure in a single school district or single county. Is the county or school district which did not vote in favor of annexation included in the territory annexed to the junior college district?

Short Answer: Yes

Discussion:

Texas Education Code section 130.065 (h) states: "The measure is adopted if the measure receives a favorable both of a majority of those voters voting on the measure."

Texas Education Code section 130.065 (i) states: "If the measure is adopted, the governing board of the district shall enter an order declaring the result of the election and that the territory has annexed to the junior college district on the date specified in the order."

The phrase "territory proposed for annexation" or "territory proposed to be annexed" appears several times in 130.065. Nowhere in 130.065 is there any language to suggest that individual political subdivisions are autonomous.

A close reading of 130.068 also shows that the language of the statute refers to "all of the territory located within the district's service area" and "encompass part of the territory located within the district's service area."

Texas Education Code section 130.068 (d) states "A junior college district may not adopt new boundaries for the district under this section that extend within the service area of another junior college district."

Nowhere in 130.068 is there any language to suggest that individual political subdivisions are autonomous.

The beginning point in the analysis is chapter 311.001 of the Government Code known as

the Code Construction Act. .002 (2) applies the Act to a revision of a code by the 60th or a subsequent legislature. The Code thus applies.

In re, E.D.L. 101 S. W. 3d 679, (Tex. App.- Fort Worth 2003) illustrates the process through which an appellate court proceeds “ with an issue of first impression in Texas regarding this question of statutory interpretation.” The primary objective is to determine and give effect to the legislature’s intent. In determining the legislative intent, the first step is to look to the statute’s plain and common meaning into present room that the legislature intended the plain meaning of its words.

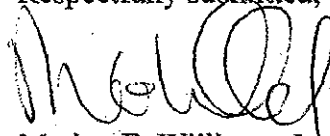
The Fort Worth Court of Appeals was following the instruction of the Texas Supreme Court stated in Crown Life Ins. Co. v. Casteel 22 S. W. 3d 378, (Tex. 2000) citing the Code Construction Act Section 312.005. The Supreme Court stated “ when determining legislative intent, we look to the language of the statute, as well as its legislative history, the objective sought, and the consequences that would flow from alternate constructions.”

The Code Construction Act 311.023 states what a court may consider when construing a statute whether or not the statute is considered ambiguous on its face. The entire act must be considered and not just isolated portions. We must presume that the legislature chose its words carefully, recognizing that every word in a statute was included for some purpose and that every word excluded was omitted for a purpose. In re, E.D.L., supra. at 685.

The principles stated in Crown Life Ins. supra. were applied as recently as July of 2005 in Ex parte Cummins, 2005 WL 1654765, (Tex App.- Fort Worth 2005) when the Fort Worth Court of Appeals was required to interpret a statute.

The above stated short answer seems to be consistent with the Education Code and the requirements of the Code Construction Act but also seems logical that if the petition requirements and/or the student residency requirements are met the elected Board of Trustees should have the authority and the discretion to define the “territory proposed for annexation” or “territory proposed to be annexed” as they may feel to be in the best interest of the institution.

Respectfully submitted,



Marion E. Williams, Jr.
Attorney for Coastal Bend College