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OPINION COMMITTEE



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The Senate of The State of Texas

Senator Leticia Van de Putte, R. Ph.

District 26

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

RE: Whether the Edgewood Independent School District, which currently holds its general election for officers on the November uniform election date in even-numbered years, may move its general election date to the uniform election date in May in odd-numbered years.

Dear Attorney General Abbott:

Please accept this letter as a request pursuant to Texas Government Code Section 402.042 for an opinion from your office for clarification on the interpretation of Section 11.0581 of the Texas Education Code and Section 41.0052 of the Texas Election Code. Specifically, I seek your opinion on whether the Edgewood Independent School District (the "District"), which currently holds its general election for officers on the November uniform election date in even-numbered years, may move its general election date to the uniform election date in May in odd-numbered years. All references to "Education Code" or "Election Code" are Texas Codes.

Background

Pursuant to Section 11.059 of the Education Code, the District Trustees serve four-year terms, with elections for one-half of the Trustees, or as near to one-half as possible, being held biennially. TEX. EDUC. CODE ANN. § 11.059(a), (c) (Vernon Supp. 2009). Historically, the District had held its general election for officers on the uniform election date in spring, in even-numbered years. Since the change in Uniform Election Dates in 1987, the District had conducted its general elections in May. Before then, the District conducted its elections in April. See: Sections 4 and 5, Acts 1987, 70th Leg., 2nd C.S., ch. 60.

On May 26, 2006,¹ after the District held its general election, Section 11.0581 of the Education Code became effective. Added by Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 11.01. Section 11.0581 requires an independent school district to hold its election for Trustees on the same date as the election for the members of the governing body of a municipality located in the school district or the general election for state and county officers. TEX. EDUC. CODE ANN. § 11.0581(a)(1)-(2) (Vernon Supp. 2009); *but see also* § 11.0581(a)(3) (not applicable to the District). The City of San Antonio (the "City") (the only municipality located in the District)

¹ Note: West Publication Co. shows May 26, 2006, as the effective date of Section 11.0581 of the Education Code; however, the HB 1 from 79th Leg., 3rd C.S., ch. 5, § 11.01, indicates the effective date as May 31, 2006.

held, and continues to hold, the election for the members of its governing body on the May uniform election date in odd-numbered years. As you know, the general elections for state and county officers are held on the November uniform election date in even-numbered years. TEX. ELEC. CODE ANN. § 41.002 (Vernon 2003).

Thus, beginning with its general elections in 2008, the District was faced with two options in order to be in compliance with Section 11.059 of the Education Code: (1) move its general election date to track the City's election date by adding one year on to the terms of Trustees for one time only; or (2) move its general election date to track the general election date for state and county officers by adding six months to the terms of Trustees for one time only. On September 25, 2007, the District elected to move its general election date to track the general election date for state and county officers, believing that adding six months to current terms was preferable to adding twelve months, albeit for one time only. However, having moved the general election date to November has proven inconvenient and ineffective, because first-time Board members who are elected to the Board in November (i.e., in the middle of a school year) are at a disadvantage because, *inter alia*, they have not been involved in the planning of the school year and have not yet received the required training as a Trustee. Essentially, the school year is lost to them. Even the Board's evaluation of the District's Superintendent becomes less effective, because new Trustees are expected to evaluate the Superintendent based on their predecessors' goals and objectives for her or him. In other words, there is no real continuity and a greater chance for conflict to arise among Board members and the Superintendent and even among Board members themselves.

The District now wishes to move its general election date back to the May uniform election date, this time in odd-numbered years, to be in joint election with the City.

Discussion of Law

Effective October 1, 2005, Section 41.0052 of the Election Code was amended to permit the governing body of a political subdivision, other than a county, to change the date on which it holds its general election for officers to another authorized uniform election date, so long as the change was made not later than December 31, 2005. TEX. ELEC. CODE ANN. § 41.0052(a) (Vernon Supp. 2009). However, on May 26, 2006, Section 11.0581 of the Education Code became effective. Added by Acts 2006, 79th Leg., 3rd C.S., ch. 5, § 11.01, eff. May 26, 2006. This section, as mentioned above, requires an independent school district to hold its election for Trustees on the same date as the election for the members of the governing body of a municipality located in the school district or the general election for state and county officers. TEX. EDUC. CODE ANN. § 11.0581 (a)(1)-(2) (Vernon Supp. 2009). The later enactment of Section 11.0581 of the Education Code permitted the District to change the date on which it holds its general election. Accordingly, the District changed the date of its general elections from the May uniform election date in even-numbered years to the November uniform election date in even-numbered years for the reason previously stated. Unlike Section 41.0052 of the Election Code, Section 11.0581 of the Education Code, as adopted and as later amended, does not impose a deadline in which an independent school district may change its general election date and does not prohibit a school district from changing its general election date more than once.

Since the adoption of Section 11.0581 of the Education Code, Section 41.0052 of the Election Code has been amended. House Bill 401 of the 81st Legislature added subsection (a-1) to Section 41.0052 of the Election Code, permitting political subdivisions (other than counties) that currently hold their general elections on a date other than the November uniform election date to change their election date to the November uniform election date, if such change is made no later than December 31, 2010. However, this amendment only affected political subdivisions that hold their general election for officers on a date other than the November uniform election date. As stated previously, the District currently holds its election on the November uniform election date. As such, arguably, the District's ability to change the date of its general election pursuant to Section 11.0581 of the Education Code has not been affected. The Education Code clearly gives the District a choice of election dates without a deadline, and there is no issue about a change in terms of office, since the Edgewood Trustees already hold their offices for four-year terms. TEX. EDUC. CODE ANN. § 11.0581 (Vernon Supp. 2009). It should be noted that your office currently has pending another request for an opinion, RQ-0864-GA, that also seeks your opinion regarding Section 41.0052 of the Election Code. While RQ-0864-GA is similar to this request in that it generally inquires about the ability of a school district to change election dates, it is not exactly on point, because that request is limited to school districts moving their elections from May to November and the effect of such a move on the terms of a district's Board of Trustees.

In informal conversations between the District and the Texas Secretary of State's Office, an employee of the Secretary of State's Election Division has suggested that the District's opportunity to change its general election date has expired pursuant to Section 41.0052 of the Election Code. This employee cites an opinion released by your office, namely Op. Tex. Att'y Gen. GA-342 (2005). However, the District, being an independent school district, is subject to Section 11.0581 of the Education Code which, being adopted after the latest amendment to Section 41.0052(a), seemingly falls under an exception to this provision. Additionally, the District currently holds its elections in November; thus, the addition of subsection (a-1) to Section 41.0052 does not apply. It also appears that, once the District moves the date of its general election from the November uniform election date in even-numbered years to the May uniform election date in odd-numbered years, it will then be subject to the restriction of Section 41.0052(a-1) of the Election Code.

Accordingly, we seek your opinion on this matter. Please feel free to contact our office with any questions you may have.

Sincerely,



Leticia Van de Putte, R.Ph.