

Richard Peña Raymond
Chair

Naomi Gonzalez
Vice Chair

RECEIVED

OCT 04 2013



Members:
Elliott Naishtat
John Zerwas
Scott Sanford
Scott Turner
Pat Fallon
Toni Rose
Stephanie Klick

OPINION COMMITTEE

House of Representatives
Committee on Human Services

September 27, 2013

The Honorable Greg Abbott
Office of the Attorney General
Opinions Committee
P.O. Box 12548
Austin, Texas 78711

FILE # ML-47406-13

I.D. # 47406

RQ-1153-GA

RE: Are the School Board Trustees for the Clint Independent School District required to file financial statement pursuant to Texas Education Code section 11.0641 if the school district boundaries are within El Paso County but lay outside the corporate city limits of the City of El Paso, Texas?

Dear Attorney General Abbott:

Please accept this letter as a request pursuant to Texas Government Code 402.042 for an opinion for clarification on the applicability of Texas Education Code section 11.0641, which was recently enacted by the Texas Legislature and will go into effect January 1, 2014 and expire on January 1, 2019. Because the law goes into effect as of January 1, 2013, I kindly request an expedited response.

Question: Does Texas Education Code section 11.0641 apply to a board of trustees of a school district whose boundaries are outside the corporate city limits of the City of El Paso, Texas?

During the Regular Session, the 83rd Texas Legislature passed House Bill 343 which added sections 11.064(d) and 11.0641 to the Texas Education Code. It appears that Texas Education Code section 11.0641 now requires school board trustees of all school districts located in a county on an international border in which a city with a population of 600,000 or more is located to file a financial statement required of state officers under Subchapter B, Chapter 572. Texas Education Code section 11.064 makes the filing of the financial statement optional with school districts in all counties except those in El Paso County, which is the subject of section 11.0641. However, the legislative history of section 11.0641 and the wording of the statute itself seem to indicate that section 11.0641 is only applicable to trustees who reside within school districts whose boundaries are solely within the corporate city limits of the City of El Paso, Texas.

The Clint Independent School District, whose trustees are the subject of this opinion request, is located outside the corporate city limits of the City of El Paso, Texas. The Clint Independent School District has within its jurisdictional limits three cities, the City

of Clint that has 926 residents, Horizon City that has 16,735 residents, and Montana Vista, which is unincorporated, that has 34,265 residents. Texas Education Code Section 11.0641(a) specifically provides:

This section applies only to a board of trustees of an independent school district that is located in a county that is located on the international border **and** in which a municipality with a population of 600,000 or more is located.”

Texas Education Code §11.0641 (Vernon Supp. 2013) (**emphasis added**).

House Bill 343, as introduced by Representative Marissa Marquez, was to apply to all independent school districts in Texas as the bill amended Texas Education Code section 11.064. *See*, Exhibit “A” (House Bill 383 Introduced Version). The House Committee Substitute for House Bill 383 added section 11.0641 to the Bill. *See*, Exhibit “B” (Committee Substitute for House Bill). Section 2 of the House Committee Substitute added section 11.0641(a), which made the filing of financial statements applicable to all school trustees in El Paso County. As stated in the House Committee Substitute, Section 11.0641(a) “applies only to the board of trustees of an independent school district that is located **in a county with a population of 800,000 or more that is located on the international border.**” (**emphasis added**). When House Bill 343 was received by the Senate and referred to the Senate Committee on Education, the bill was reported out of the committee with a committee substitute. Section 2 of the committee substitute amended section 11.0641(a) to read “this section applies only to the board of trustees of an independent school district that is located **in a county that is located on the international border and in which a municipality with a population of 600,000 or more is located.**” (**emphasis added**). *See* Exhibit “C” (Senate Committee Substitute). The language in 11.0641(a) as voted out of the Senate Committee is the same language that appears in the enrolled version that passed the state legislature. If the legislative intent of section 11.0641(a) was to affect all school districts in El Paso County then the version of section 11.0641(a) that passed out of the House of Representative should have been kept and not amended. By having the Senate amend section 11.0641, the intent of the legislature would indicate that section 11.0641 would only apply to residents of the City of El Paso by referring to the 600,000 population threshold not 800,000 which would be indicative of the population of El Paso County. Accordingly, the legislative intent, with the passage of section 11.0641, was that section 11.0641 only apply to those trustees whose school district’s boundaries are within the city limits of El Paso, Texas.

Alternatively, one of the principles of statutory construction is that statutes are to be construed according to their plain language. *See, In re Canales*, 52 S.W.3d 698 (Tex. 2001). The Austin Court of Appeals succinctly stated the rules of statutory construction:

When we construe administrative rules and statutes, our primary objective is to give effect to the intent of the issuing agency and legislature, “which, when possible, we

discern from the plain meaning of the words chosen.” *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006) (addressing statutory construction); see *Rodriguez v. Service Lloyds Inc. Co.*, 997 SW.2d 248, 254 (Tex. 1999) (addressing rule construction). We consider statutes and rules as a whole rather than their isolated provisions. *TGS-NOPEC*, 340 S.W.3d at 438-39. We presume that the legislature chooses a statute’s language with care, purposefully choosing each word it includes, while purposefully omitting words not chosen. *Id.* The meaning of a statute’s language may be informed by factors that include the law’s objective. Tex. Gov’t Code Ann. §311.023(1) (West 2005); see also *Shumake*, 199 S.W.3d at 284.

We will look first to the plain language of the relevant statute and rules to determine whether they are ambiguous; if they are not, we will apply their words according to their common meaning. *Railroad Com’n v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011). To the extent that they are ambiguous, we will differ to the agency’s interpretation if it is reasonable unless it is “plainly erroneous or inconsistent with the language of the statute, regulation, or rule.” *TGS-NOPEC*, 340 S.W.3d at 430.

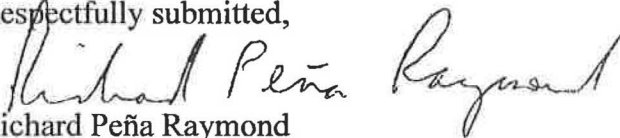
See, *Heritage on San Gabriel Homeowners Ass’n v. Texas Commission on Environmental Quality*,---S.W3d---, 2012 WL 3155755, *4 (Tex. App.--Austin, July 31, 2012).

The language in Section 11.0641(a) clearly and unambiguously states that Texas Education Code section 11.0641 only applies to board of trustees of an independent school district that is located in a county on the international border and that the school district is part of a municipality with a population of 600,000 or more. By its plain reading, the statute is not applicable to a school district whose boundaries are outside a municipality with a population of 600,000 or more.

Additionally, can you also address the constitutionality of this law applying only to one county?

This question is not squarely addressed by any existing Attorney General Opinion or in case law; therefore, guidance from the Attorney General is necessary.

Respectfully submitted,


Richard Peña Raymond

Enclosures: 1. Exhibit "A" (HB 343 (Introduced Version))
2. Exhibit "B" (HB 343 (House Committee Substitute))
3. Exhibit "C" (HB 343 (Senate Committee Substitute))

cc: Juan J. Cruz, General Counsel
Clint ISD