



Office of the Attorney General
State of Texas

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March 11, 1996

The Honorable Robert Junell
Chair
Committee on Appropriations
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-029

Re: Whether the board of directors of the Red Creek Municipal Utility District must call a hearing on the exclusion of land from the district pursuant to property owners' petitions given that the board does not intend to order a district tax bond election and has already held hearings on other property owners' petitions (ID# 37961)

Dear Representative Junell:

You ask whether the board of directors of the Red Creek Municipal Utility District (the "district") must call a hearing on the exclusion of land from the district pursuant to district property owners' petitions. You have submitted a letter stating that the petitions at issue were submitted after the board had already held hearings pursuant to other property owners' petitions. The letter also notes that section 49.303 of the Water Code requires the board of a general-law water district to call an exclusion hearing on a property owner's petition for exclusion "before the first election on the question of whether bonds should be issued payable in whole or in part from taxes is ordered." Water Code § 49.303(b). It advises that "Red Creek is not going to issue tax bonds" and therefore "there is not going to be an election on the question of whether bonds should be issued." *See id.* ch. 49 (provisions generally applicable to districts created under authority of either art. III, § 52(b), or art. XVI, § 59, of Tex. Const., with exceptions), ch. 54, subch. F (municipal utility district may issue bonds payable from taxes if approved at election of district voters); *see also id.* § 54.001 (definitions). The letter suggests that the board is not required to hold hearings on the recent petitions given that the board does not intend to order a district tax bond election and has already held hearings on other property owners' petitions.

Section 49.303(b) provides as follows:

The board must call a hearing on the exclusion of land or other property from the district on the written petition of any landowner or property owner in the district filed with the secretary of the board before the first election on the question of whether bonds should be issued payable in whole or in part from taxes is ordered.

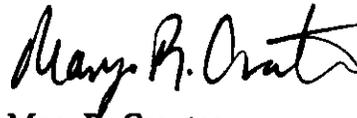
Section 49.303(b) on its face requires the district board to call an exclusion hearing pursuant to an exclusion petition submitted to the board secretary anytime before it orders its first district tax bond election. The purpose of making an order for a district tax bond election the cut-off point for the submission of exclusion petitions appears to be to prevent the impairment of the district's ability to repay the bonds once it has undertaken to issue them. Nothing on the face of section 49.303(b) suggests it is intended to limit the right of a property owner to a hearing on an exclusion petition to those circumstances in which a board will order a district tax bond election. Furthermore, nothing on the face of section 49.303(b) suggests it is intended to limit the right of a property owner to a hearing on an exclusion petition after the board has held a hearing on other property owners' exclusion petitions. Thus, we believe that until the board orders a district tax bond election the board must call a hearing pursuant to a property owner's exclusion petition.

This construction is supported by the statutory scheme for exclusion hearings in its entirety. Section 49.304 provides, among other things, that if the board receives a petition "the board shall give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property," *id.* § 49.304(a), and that "[t]he notice shall advise all interested property owners of their right to present petitions for exclusions of land or other property," *id.* § 49.304(c). Section 49.305(b) provides for the content of a petition and requires that "[a] petition for exclusion be filed with the district at least seven days before the hearing." We read these provisions to require that other interested property owners be notified of the opportunity to present petitions at the section 49.304(a) hearing and that such petitions be filed at least seven days before the hearing in order to be considered. We find nothing in these provisions, however, that precludes a property owner from filing an exclusion petition at another time, and nothing that would relieve the board of its duty under section 49.303 to call a hearing upon receipt of such a petition, provided that the board has not yet ordered a district tax bond election. Had the legislature intended to prevent a property owner from filing a petition after a hearing on other petitions or to limit the right of a property owner to file a petition to those circumstances in which a board will order a district tax bond election, we think it would have clearly indicated such intent. Thus, we conclude that the board of directors of the district must call a hearing on the exclusion of land from the district pursuant to district property owners' petitions, despite the fact that it does not intend to hold a district tax bond election and has already held a hearing on other exclusion petitions.

S U M M A R Y

Under Water Code section 49.303(b), the board of directors of the Red Creek Municipal Utility District must call a hearing on a property owner's petition for exclusion of property from the district despite the fact that it does not intend to hold a district tax bond election and has already held a hearing on other exclusion petitions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is written in a cursive, flowing style.

Mary R. Crouter
Assistant Attorney General
Opinion Committee