



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 24, 1996

The Honorable Senfronia Thompson
Chair, Committee on Judicial Affairs
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-061

Re: Whether a municipal utility district board member becomes ineligible to serve on the board if during the board member's term he or she no longer owns property in the district or is no longer a registered voter in the district (ID# 38145)

Dear Representative Thompson:

Section 54.102 of the Water Code requires a member of a municipal utility district's board of directors either to own land within the district or to be a qualified voter in the district. You indicate that a director of the Tidwell Timbers municipal utility district no longer owns land within the district and is no longer a registered voter within the district. You ask whether the member may continue serving on the board. We conclude that Water Code section 54.102 disqualifies the member if he no longer owns land within the district or is no longer qualified to vote within the district.

Section 54.102 of the Water Code establishes requirements an individual must meet to be qualified to "serve" as a director of a municipal utility district. Among other things, a director must either own land subject to taxation within the district or be a qualified voter within the district. Thus, a director who fails to meet one of these two requirements is not qualified to serve on the municipal utility district's governing board.

Your question causes us to consider whether a director must meet the requirements listed in section 54.102 only to take office, or whether a director must satisfy the requirements at all times during his or her term of office. In our opinion, the word "serve" encompasses the director's tenure on the board. Conversely, we do not believe the word "serve" means only "to take office."

Furthermore, we believe the reasoning of Attorney General Opinion H-1065 applies to Water Code section 54.102. In that opinion, this office determined that the statute specifying certain qualifications members of the State Board of Morticians must satisfy applied not only to the members' appointment, but also to the members' service on the board.¹ The opinion stated that the legislature must have intended the qualifications listed

¹Attorney General Opinion H-1065 (1977) at 2.

to be represented on the board; consequently, a board member who, at some point during his or her service, no longer meets the statutory qualifications loses the right to serve.² The board member automatically vacates the position.³

We therefore construe section 54.102 of the Water Code to list qualifications a director of a municipal utility district must satisfy throughout the term of service on the board. A director who, during the term of office, divests him- or herself of an ownership interest in land subject to taxation in the district is no longer qualified to serve on the municipal utility district board if the officer has no right to vote in the district. Likewise, a director who does not own property in the district and who, during the term of office, loses the right to vote in the municipal utility district is no longer qualified to serve on the district's governing board. In both circumstances, the director automatically vacates his or her position on the board.

We cannot, however, determine whether the particular director about whom you ask is qualified to serve on the municipal utility district board. A letter you included with your request to this office suggests that the director no longer owns property in the district (and no longer is a qualified voter "within" the district). The letter indicates that the director recently became divorced, and the final divorce decree awards to the director's former spouse the land located within the municipal utility district. Nevertheless, according to the letter, the director remains the record owner of the property, and the director is the person responsible to pay ad valorem taxes on the land. To decide whether, in this situation, the board member owns property that is subject to taxation in the municipal district requires the resolution of fact questions; the issue is, therefore, inappropriate to the opinion process.⁴

²*Id.* (quoting Attorney General Opinion H-578 (1975)).

³*Id.* (quoting Attorney General Opinion H-578 (1975)).

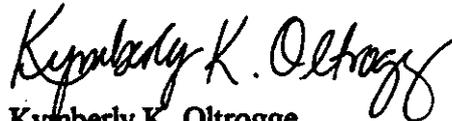
⁴*See, e.g.*, Attorney General Opinions DM-98 (1992) at 3, H-56 (1973) at 3, M-187 (1968) at 3, O-2911 (1940) at 2.

S U M M A R Y

Water Code section 54.102 lists qualifications a director of a municipal utility district must satisfy throughout the term of service on the board. A director who, during the term of office, divests him- or herself of an ownership interest in land subject to taxation in the district is no longer qualified to serve on the municipal utility district board so long as the director also may not vote in the district. Likewise, a director who owns no property in the district and who, during the term of office, loses the right to vote in the municipal utility district is no longer qualified to serve on the district's governing board. In both circumstances, the director automatically vacates his or her position on the board.

Whether a particular member of a municipal utility district's governing board owns property that is subject to taxation in the district is a question of fact.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee