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DAVID SIBLEY
STATE SENATOR
District 22

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Opinion Committee

January 5, 1998

RQ-1071

FILE # ML-40014-98
I.D. # 40014

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Morales:

Pursuant to the authority provided in Chapter 402.042, Government Code, I request your opinion or ruling concerning whether a nonprofit water supply corporation which is not exempt from ad valorem taxation is subject to the Open Meetings Act and the Open Records Act.

The North Bosque Water Supply Corporation (the "Corporation") is a nonprofit water supply corporation organized under Article 1434a, Vernon's Texas Civil Statutes. Sections 15.006, 16.002, and 17.002 of the Texas Water Code provide that nonprofit water supply corporations which receive financial assistance from the State (under Chapters 15, 16, or 17 of the Water Code) are required to comply with the Open Meetings and Open Records Acts. The Corporation does not receive, and has not received, any financial assistance from the State of Texas.

Under the Open Meetings Act and the Open Records Act, a "governmental body" includes the governing body of:

a nonprofit corporation organized under [Article 1434a, V.T.C.S.] that provides a water supply, waste water service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code.

Section 11.30 of the Tax Code provides an exemption from ad valorem taxation for a water supply corporation organized under [Article 1434a, V.T.C.S.] that provides in the bylaws of the corporation that on dissolution of the corporation the assets of the corporation remaining after discharge of the corporation's indebtedness shall be transferred to an entity that provides a water supply or waste water service, or both, that is exempt from ad valorem taxation.

While the Corporation is a nonprofit water supply corporation organized under Article 1434a, it has been paying, and is currently paying, ad valorem taxes. Moreover, the Corporation is not eligible for an exemption under Section 11.30 of the Tax Code because its bylaws currently provide that

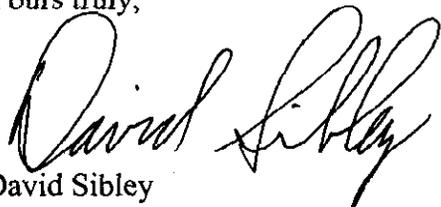


upon dissolution of the Corporation its assets will be transferred to its members. Consequently, it appears that the Corporation does not meet the definition of a "governmental body."

In addition, the Attorney General has recognized, in previous opinions, that water supply corporations are not "political subdivisions" for purposes of the Open Meetings and Open Records Acts. See Texas Attorney General Opinion No. JM-596 (December 29, 1986). However, as pointed out by the Attorney General in Opinion No. 95.011 (March 17, 1995), the legislature has amended several specific provisions under the Texas Water Code which define "political subdivisions" for purposes of the Water Code. Under these amendments, a "political subdivision" includes a nonprofit water supply corporation. Accordingly, is the Corporation now considered a political subdivision for purposes of the Open Meetings Act and Open Records Act?

I would greatly appreciate an opinion from your office addressing these questions. These issues are of substantial importance to the Corporation and its members, and other nonprofit water supply corporation in Texas and their members.

Yours truly,

A handwritten signature in black ink that reads "David Sibley". The signature is written in a cursive style with a large initial "D".

David Sibley

cc: The Honorable Bob Bullock
Lt. Governor of the State of Texas

The Honorable Pete Laney
Speaker of the House of Representatives