



The Legislature
State of Texas

May 2, 2002

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OPINION COMMITTEE

RQ-0544-JC

The Honorable John Cornyn
Attorney General of Texas
Attention: Opinions Committee
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-42592-02
I.D. # 42592

Re: Creation and operation of the Southeast Trinity Groundwater District

Dear General Cornyn:

In 1999, the 76th Legislature enacted Senate Bill 1911, which created various groundwater conservation districts, including the Southeast Trinity Groundwater Conservation District. Section eight of the bill conferred authority on the commissioners court of a county containing territory included in the district to appoint temporary directors of the district, who are authorized by Section 10 of the bill to call an election confirming the creation of the district and electing initial directors of the district. Section 15 provided, in part, that an election for the confirmation of the creation of a groundwater conservation district and for the selection of initial directors for a district could not be held prior to September 1, 2001, unless action was taken by the 77th Legislature to ratify the creation of the district.

The 77th Legislature passed two bills, Senate Bill 2 and House Bill 2855, which ratified the creation of the Southeast Trinity Groundwater Conservation District. A confirmation election conducted in November, 2001 defeated both the propositions confirming the creation of the Southeast Trinity Groundwater Conservation District and authorizing the imposition of a maintenance tax, but a slate of initial directors for the district was elected. As a consequence, we respectfully request an official opinion from your office regarding the proper construction of the statutes governing the creation and operation of the Southeast Trinity Groundwater District, as well as provisions of the Texas Water Code which confer authority on the Texas Natural Resource Conservation Commission.

I. Future election issues

Subsection (c) of Section 10 of Senate Bill 1911, which initially created the Southeast Trinity Groundwater Conservation District, governed the confirmation and the election of the initial directors. Subsection (c) states:

(c) If the district is confirmed at the election, the temporary board of directors, at the time the vote is canvassed, shall:

(1) declare the qualified person who receives the most votes for each position to be elected as the initial director for that position; and

(2) include the results of the initial directors' election in the district's election report to the Texas Natural Resource Conservation Commission.

The language of Subsection (c) indicates that a declaration of winners of the election to determine initial directors may be made only if the district itself is confirmed in that election.

Neither Senate Bill 2 nor House Bill 2855 passed by the 77th Legislature include language similar to that set forth in Senate Bill 1911. Both bills, however, include the following language:

Except as provided by this section, a confirmation and initial directors' election must be conducted as provided by Subsections (b)-(h), Section 36.017, Water Code and the Election Code. (Senate Bill 2, § 3.108(e); House Bill 2885, § 8 (e))

Subsections (f)-(h) of Section 36.017, Water Code, provide:

(f) If a majority of the votes cast at the election favor the creation of the district, the temporary board shall declare the district created and shall enter the result in the minutes;

(g) If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the result in its minutes. The temporary board shall continue operations in accordance with Subsection (h);

(h) If the majority of the votes cast at the election are against the creation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.

Both Senate Bill 2 and House Bill 2885 provide that temporary directors shall serve until initial directors are elected and both bills include the following relevant language:

If the district is defeated, the temporary directors may call and hold subsequent elections to confirm establishment of the district. A subsequent election may not be held earlier than the first anniversary of the date on which the previous election was held. (Senate Bill 2, Part 10 § 3.1008(g); House Bill 2885, § 8(g))

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Future confirmation elections can be held in each of the succeeding three years after the defeat of the confirmation proposition in the first confirmation election.

Based on these conflicting provisions, we submit the following questions:

1. Do the temporary directors or the initial directors elected in the November, 2001 election call and hold subsequent elections?
2. Even though doing so is not expressly authorized, may a proposition authorizing the district to impose a maintenance tax be included on the ballot in future confirmation elections?
3. Is the county in which the district is located required to fund future confirmation elections if the district is unable to do so?
4. Is the holding of future confirmation elections permissible or is it mandatory?
5. Do elections have to be held in each of the three years after the initial election?
6. May either the temporary directors or the initial directors dissolve the district immediately without holding future confirmation elections?

II. Authority of district subsequent to confirmation election

Section 5(a) of Senate Bill 1911 provides that “[e]xcept as provided by Subsection (c) and (d) of this section or otherwise by this Act, the temporary directors of a district have the same permitting and general management powers as those granted to initial and permanent directors under Chapter 36, Water Code.” Section 3.1006(a) of Part 10 of Senate Bill 2 provides that “[e]xcept as provided by this section or otherwise by this part, the district has the same permitting and general management powers as those granted under Chapter 36, Water Code.” Section 5 of House Bill 2885 provides:

Except as otherwise provided by this Act, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This Act prevails over any provision of general law that is in conflict with or inconsistent with the Act.

Certain provisions of the Water Code, however, made applicable to the district by Section 3.1008(e) of Senate Bill 2 and Section 10(f) of House Bill 2885, appear to limit the authority in the event that the confirmation proposition is defeated in the confirmation election. Subsections (g) and (h) of Section 36.017, Water Code, state:

(g) If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the result in its minutes. The temporary board shall continue operations in accordance with Subsection (h);

(h) If the majority of the votes cast at the election are against the creation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.

An argument could be made that, absent a successful election confirming the creation of the district, the district could operate with full Chapter 36 authority until the district is dissolved automatically by operation of the Senate Bill 2. It has also been suggested that either the temporary directors or the initial directors elected in November 2001 have authority to dissolve the district immediately without waiting for the automatic dissolution of the district absent a successful confirmation election in 2005. Therefore, we submit the following questions:

1. What authority does the district have in the interim period between the recent defeat of the confirmation proposition in the November 2001 election and subsequent future confirmation elections that can be conducted in each of the next three years prior to the district's automatic dissolution in 2005?
2. Do the temporary directors have the authority to dissolve the district prior to the district's automatic dissolution in the absence of a successful confirmation election?

III. Creation by the Texas Natural Resource Conservation Commission (TNRCC) of a groundwater conservation district

Under Section 35.007, Water Code, the TNRCC is required to designate priority groundwater management areas in the state for all areas that meet the criteria for designation pursuant to the procedure set forth in Section 35.008, Water Code. Section 35.012, Water Code, provides that, after the commission issues an order designating an area a priority groundwater management area for purposes of Chapter 35, the landowners may create a groundwater management district. Within two years of designation, the TNRCC is required to create a groundwater conservation district in any areas so designated that are not located within a district created by the landowners.

Subsequent to the defeat of the proposition confirming the creation of the Southeast Trinity Groundwater District, concern has arisen regarding the authority or duty of the TNRCC to create a groundwater conservation district in Comal County, because the land comprising the district is actually located within the boundaries of the Hill Country Priority Groundwater Management Area. Therefore, we submit the following question:

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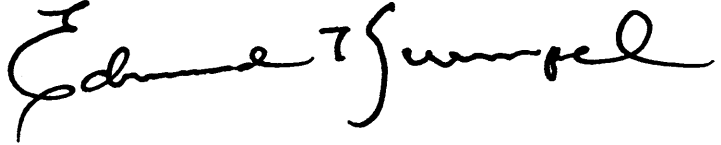
If the Southeast Trinity Groundwater District is dissolved immediately in response to the defeat of the proposition confirming the district at the confirmation election in November, 2001, is the TNRCC required to establish a groundwater conservation district in Comal County on land that is included within the boundaries of the Hill Country Priority Groundwater Management Area?

We respectfully request your official opinion on the questions we submit in this letter.

Sincerely,



Jeff Wentworth
Texas State Senate
Chair, Senate Committee on Redistricting



Edmund Kuempel
Texas House of Representatives
Chair, State Recreational Resources