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OPINION COMM...

August 26, 2002

RQ-0600-JC

FILE # ML-42771-02

I.D. # 42771

The Honorable John Cornyn
Attorney General
Attention: Susan Gusky
Opinions Committee
P. O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion

Dear Attorney General Cornyn:

As District Attorney of Brazoria County, I seek your opinion regarding the ability of a local school district (Alvin Independent School District) employee, who is also an Alvin city council member to vote on issues that come before the city council involving the Alvin Independent School District.

I.

FACTUAL BACKGROUND

Prior to a recent Alvin city council meeting, an issue arose as to whether a city council member who is also employed in the transportation department of the Alvin Independent School District (AISD) could participate in the discussion of and the voting on an AISD platting request?

II.

ISSUES PRESENTED

1. Is a school district a business entity as defined by Local Government Code, § 171.001(2)?
2. Is a matter that has a special economic effect on a public school system distinguishable from the effect on the public?
3. Does a city councilman who is also an employee of the local public school district need to abstain from voting on a matter that affects the school district because the action on the matter will have a special economic effect on a local public school district?

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**III.
DISCUSSION OF ISSUES**

Local Government Code §171.001(1) defines a "local public official" to mean a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

Local Government Code §171.001(2) defines a business entity as a "sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Local Government Code §171.004(c) states that a person has a substantial interest in a business entity if funds received by the person from the business entity exceed 10 percent of the person's gross income from the previous year.

1. Members of the Alvin city council are local public officials within the provisions of Local Government Code §171.001(1). The official who would be voting also has a substantial interest in AISD because the funds he receives from the district exceed 10% of his gross income from the previous year; however, §171.004 of the Local Government Code only applies when a member of the local governmental body has a substantial interest in a *business entity* which will be affected by a decision of the governmental body. In Attorney General Opinion JM-852, it was determined that Southwest Texas State University was not a business entity as defined by §171. The reasoning in that opinion seems directly on point to the current issue. In that opinion the rationale was that the university was a "state supported institution" that could not carry out purposes similar to the purposes of some of the business entities named in §171.001(2). AISD, like Southwest Texas State University, has as its primary purpose the providing of education to all who enter its campuses. The district is publicly funded and the use of its funding is strictly controlled by statute.
2. Based on the reasoning in JM-852, the effect on the district would be the effect on the public and therefore not distinguishable.
3. The question of whether the councilman should vote or not depends entirely on whether the district is a business entity.

Very truly yours,


JERI YENNE