



TEXAS HIGHER EDUCATION COORDINATING BOARD

P.O. Box 12788 Austin, Texas 78711

RECEIVED

RECEIVED

FEB 13 2006

FEB 07 2006

OPINION COMMITTEE

February 6, 2006

OPEN RECORDS DIVISION

RQ-0446-GA

FILE # ML-44616-06
I.D. # 44616

Robert W. Shepard
CHAIRMAN
Neal W. Adams
VICE CHAIRMAN
Lorraine Perryman
SECRETARY OF THE BOARD

The Honorable Greg Abbott
Texas Attorney General
Price Daniel Building
Post Office Box 12548
Austin, Texas 78711-2548

Laurie Bricker
Jerry Farrington
Paul Foster
Joe B. Hinton
George L. McWilliams
Elaine Mendoza
Nancy R. Neal
Lyn Bracewell Phillips
Curtis Ransom
A. W. "Whit" Riter, III

Attention: Opinion Committee

Dear General Abbott:

Raymund A. Paredes
COMMISSIONER
OF HIGHER EDUCATION

I am writing to ask your opinion regarding the interpretation of Texas Education Code, Chapter 130, Subchapter D, specifically §§130.065 and 130.068 which were amended under HB2221 during the 79th Legislative Session. This request is being made on behalf of Coastal Bend College.

512/ 427-6101
Fax 512/ 427-6127

Section 130.065 of the Education Code sets forth requirements for the annexation of territory by a junior college district by petition. Under this section, for an annexation to occur, a petition proposing the annexation is presented to the governing board of the district, a public hearing is held, and an election is then ordered by the governing board on the measure.

Web site:
<http://www.thecb.state.tx.us>

Coastal Bend College would like their district's governing board to consider the extension of its boundaries under §130.068 which they argue provides exceptions to the petition requirements set forth under §130.065. Subsections (a) and (b) of §130.068 specifically provide that the governing board of a junior college or district may order an election to extend boundaries if:

- (a) ...more than 35 percent of the total number of students who enrolled in the junior college district in the most recent academic year resided outside of the existing junior college district.
- (b) ...more than 15 percent of the high school graduates for each of the preceding five academic years in the territory proposed to be added to the district have enrolled in the junior college district.

Subsection 130.065(c) goes on to state:

Except as otherwise provided by this section, Section 130.065 applies to an action taken under this section, including the provisions of Section 130.065 requiring a petition to be submitted before an election may be called.

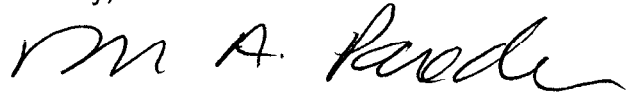
According to Coastal Bend College, the language under §130.068(c) establishes that §130.068 takes precedent over §130.065 including the petition requirements, except as otherwise required. In addition, Coastal Bend College

Opinion Request
February 6, 2006
Page Two

argues that the legislative intent supports their argument that §130.068 was to provide exceptions to the petition requirement set out in §130.065; otherwise §130.068 would be adding additional criteria to Section 130.065 rather than providing exceptions as the language in 130.068(c) indicates.

At our request, Coastal Bend College has provided a letter briefing on this issue that includes the legislative author of the statute and that letter is incorporated into this request. Thank you for your attention to this matter. Should you require any additional information, please feel free to contact Jan Greenberg, General Counsel at (512) 427-6143.

Sincerely,



Raymund A. Paredes

Attachments: Letter brief on behalf of Coastal Bend College dated 2006

cc: Marion E. Williams, Jr., J.D.
Reynaldo Garcia, Ph.d., Texas Association of Community Colleges

MARION WILLIAMS
ATTORNEY AT LAW
P.O. Drawer 250
BEEVILLE, TEXAS 78104-0250
(361) 358-3710
FAX (361) 358-3745

TEXAS HIGHER EDUCATION
COORDINATING BOARD
from Deputy Commissioner To _____

FEB 02 2006

Rec _____
Prepare My Reply _____ For info _____
Recommend Action _____ File _____
Please Handle _____ Your Reply _____

January 31, 2006

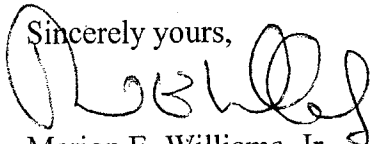
Texas Higher Education Coordinating Board
ATTENTION: Jennifer Kaufman
P. O. Box 12788
Austin, Texas 78711

RE: Request for Attorney General's Opinion concerning
Education Code Sections 130.068 and 130.065

Dear Ms. Kaufman:

Enclosed is my revised brief with exhibits to aid you in the submission of a request for an Attorney General's Opinion concerning the above referenced statutes. If you have any questions or you want further briefing in support of the request, please let me know. Thank you very much for your assistance in this matter.

Sincerely yours,



Marion E. Williams, Jr.

MEW/hb

enc.

cc: Dr. John Brockman, President
COASTAL BEND COLLEGE
3800 Charco Road
Beeville, Texas 78102

Misc\CBC AG request

Question Presented: Is the petition requirement of section 130.065 of the Texas Education Code required if the section 130.068 (a) or (b) student residency percentages requirements are satisfied?

Short Answer: No

Discussion:

Section 130 of the Texas Education Code was amended by HB 2221 during the most recent legislative session.

Section 130.065 outlines the procedure through which citizens may petition to permit an election to annex a certain area into a community college district.

Section 130.068 (a) and (b) outline procedures through which the elected board of trustees of a community college may call on election to annex certain areas into a community college district.

Section 130.068(c) states in pertinent part as follows “ Except as otherwise provided by this section, Section 130.065 applies to an action taken under this section, including the provision of Section 130.065 requiring a petition to be submitted before an election may be called.”

Thus, does the Section 130.065 petition requirement apply to the fact situations described in Section 130.068 (a) and (b) ?

The beginning point in the analysis is Chapter 311 of the Government Code known as the Code Construction Act. Section 311.002 (2) of the chapter applies the Act to a revision of a Code made by the 60th or a subsequent legislature. The Code thus applies to HB 2221.

In re, E.D.L. 101 S. W. 3d 679 at 685, (Tex. App.- Fort Worth 2003) illustrates the process through which an appellate court proceeds “ with an issue of first impression in Texas regarding this question of statutory interpretation. The primary objective is to determine and give effect to the legislature’s intent. In determining the legislative intent, the first step is to look to the statute’s plain and common meaning and presume that the legislature intended the plain meaning of its words.”

The Fort Worth Court of Appeals was following the instruction of the Texas Supreme Court stated in Crown Life Ins. Co. v. Casteel 22 S. W. 3d 378, (Tex. 2000) citing the Code Construction Act Section 312.005. The Supreme Court stated “ when determining legislative intent, we look to the language of the statute, as well as its legislative history, the objective sought, and the consequences that would flow from alternate constructions.”

So, if the opening phrase of Section 130.068 (c) “except as otherwise provided by this

section....” is to be given plain and common meaning, we are told that Section 130.068 is going to carve an exception from something. We are immediately told “ Section 130.065 applies...” The plain and common meaning of Section 130.068 (c) is that Section 130.068 is carving an exception to Section 130.065.

The Code Construction Act 311.023 states what a court may consider when construing a statute whether or not the statute is considered ambiguous on its face. The entire act must be considered and not just isolated portions. We must presume that the legislature chose its words carefully, recognizing that every word in a statute was included for some purpose and that every word excluded was omitted for a purpose. In re, E.D. L., supra. at 685.

The principles stated in Crown Life Ins, supra. were applied as recently as July of 2005 in Ex parte Cummins, 2005 WL 1654765, (Tex App.- Fort Worth 2005) when the Fort Worth Court of Appeals was required to interpret a statute.

By giving the opening phrase of Section 130.068 (c) the plain and common meaning stated above, Section 130.065 and Section 130.068 (a) and (b.) fit together nicely and complement each other. Section 130.065 basically grants to individual residents a tool to initiate annexation into a community college district. Section 130.068 (a) grants to the board of trustees of a community college district an option to annex the entire service area if certain student residency requirements are met. Section 130.068 (b.) grants to the board of trustees of a community college district an option to annex a part of the service area if certain student residency requirements are met. All three sections are given meaning and the entire act fits together.

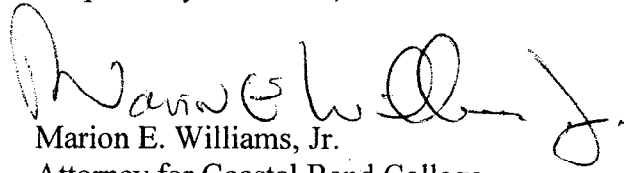
There are attached hereto and marked as exhibits “A” and “B” the following documents:

1. As Exhibit “A”, correspondence faxed on January 6, 2006 from Representative Vilma Luna, the sponsor of HB2221, stating her intention and opinion to Dr. John M. Brockman, President of Coastal Bend College .
2. As Exhibit “B”, a six (6) page House Research Organization bill analysis of HB 2221.

Although I concluded that the petition requirement of Section 130.065 did not apply to the fact situation described in 130.068(a) or (b) and the third and fourth paragraphs on page 3 of the House Research Organization bill analysis suggest “...the governing board of the district could order an election...” seems to suggest the same conclusion. An argument could be made and needs to be acknowledged reaching the opposite conclusion. This argument would also be grounded in the Code Construction Act, and would focus on the last phrase of Section 130.068(c). If Section 130.068(c) had been written “except as otherwise provided in this section, Section 130.065 applies to an action taken under this section...”, the argument would be that the Legislature’s intent was clearly stated; however, the Legislature added another phrase to Section 130.068(c) stating “.....including the provisions of Section 130.065 requiring a petition to

to be submitted before an election may be called.” Why did the Legislature decide to add this phrase which at first seems to be redundant? The answer is to emphasize the obvious point that the petition requirement is a necessary element or precondition to the calling of any election. The same cases cited in support of the waiver of the election would be cited in support for the argument that the petition requirement is not waived and the plain meaning of the statute argument would be advanced. The Legislature would not include the phrase “including the provisions of Section 130.065 requiring a petition to be submitted before an election may be called” unless it was for some purpose and the only reason for including it is to emphasize the requirement of a petition prior to an election.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marion E. Williams, Jr.", written in black ink.

Marion E. Williams, Jr.
Attorney for Coastal Bend College