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OPINION COMMITTEE

KERR COUNTY ATTORNEY



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REX EMERSON

COUNTY COURTHOUSE, SUITE BA-103 • 700 MAIN STREET • KERRVILLE, TEXAS 78028

October 23, 2007

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711

RQ-0643-GA

ISSUE:

- 1) Whether the Kerr County Airport Authority created under H.B. No. 956 can be utilized and the Board populated 37 years after county election and vote canvassing declaring authority created.
- 2) Whether the alternate airport governance created by City and County after the 1970 election establishing the Kerr county Airport Authority can legally govern the airport.

DISCUSSION:

On November 8, 1966 Texas Constitutional Amendment Art. IX, Sec. 12 authorized the voters and Legislature to establish local airport authorities. On June 8, 1967 the Texas Legislature approved HB 956 establishing the statutory authority for Kerr County voters to approve an airport authority. On April 14, 1970 the City of Kerrville chose to have the Board members appointed instead of elected. On April 17, 1970 Kerr County accepted and certified citizen's petition for the creation of a Kerr County Airport Authority. On May 16, 1970 Kerr County held an election and on May 22, 1970 Commissioners Court canvassed the votes and declared the Kerr County Airport Authority was created.

HB 956 Subchapter B, Section 6(a) states that the Commissioners Court shall appoint board members within 10 days after declaring the authority created. The City and the County concur that the Airport Authority Board members were never appointed and that since 1970 the airport has been managed under either the Texas Municipal Airport Authority or the Transportation Code. Thirty seven years later the governing bodies are interested in following the intent of the voters and establishing the Kerr County Airport Authority as an independent governing body.

HB 956 does not contain any provisions for repeal. I contacted the Texas Legislative Reference Library and they could not find any record that HB 956 had either been repealed or

incorporated into other legislation.

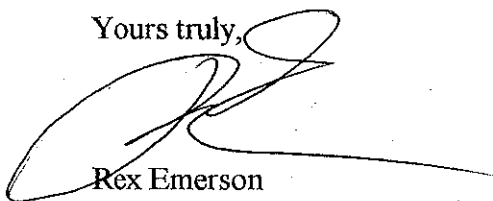
The strict wording of the statute that the board members shall be appointed within 10 days after Commissioners declared the Authority created creates an issue of doing so 37 years later. The fact that HB956 has not been repealed raises the issue of whether it is still possible to populate the Authority at this time. I have not been able to find any guiding authority as to whether thirty-seven years later the City and County can follow HB956 statutory procedures and appoint board members to populate the Kerr County Airport Authority Board.

The City and the County have utilized varied forms of alternative management to govern the airport since the voters approved the Kerr County Airport Authority in 1970. There is uncontroverted evidence that the intent of the voters and the governing bodies in 1970 was to establish an independent Airport Authority. In addition, there is a 1987 City memorandum, a 2003 City memorandum, and Commissioner court discussion each of which indicates knowledge that the airport was not being governed as directed by the voters. Given that the voters approved the Airport Authority and the Commissioners declared the Authority "created" I would assert that any other form of governance flies in the face of the voters' intent.

Please see the attached index and documents in support of the above statements.

Thank you for your guidance in clarifying the above situation.

Yours truly,

A handwritten signature in black ink, appearing to be 'Rex Emerson', written over a horizontal line.

Rex Emerson