



TEXAS EDUCATION AGENCY

1701 North Congress Ave. • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • www.tea.state.tx.us

RECEIVED

February 11, 2010

FEB 12 2010

FILE # ML-46340-10

I.D. # 46340

The Honorable Greg Abbott
Attorney General of Texas
Price Daniel Building
P. O. Box 12548
Austin, Texas 78701-2548

OPINION COMMITTEE

RQ-0864-GA

Re: Effect of Amendments to section 41.0052 on a School District Elections

Dear General Abbott:

I am writing to request your opinion on the impact, if any, of recent amendments to Section 41.0052 of the Texas Election Code on the ability of independent school districts¹ to change the election date for their boards of trustees.

The question involves amendments made by HB 401 of the 81st Legislature which added subsection (a-1) to section 41.0052 of the Election Code. Section 41.0052(a-1) permits political subdivisions, other than counties, which currently hold their general elections on a date other than the November uniform election date to change their election date to the November uniform election date. The subsection states that the political subdivision must make this change no later than December 31, 2010. Note that HB 401 left subsection 41.0052(b) unchanged, which requires a governing body changing an election date to "adjust the terms of office" to conform to the new election date. Section 41.0052, as amended, currently reads as follows:

Sec. 41.0052. CHANGING GENERAL ELECTION DATE. (a) The governing body of a political subdivision other than a county may, not later than December 31, 2005, change the date on which it holds its general election for officers to another authorized uniform election date.

(a-1) The governing body of a political subdivision, other than a county, that holds its general election for officers on a date other than the November uniform election date may, not later than December 31, 2010, change the date on which it holds its general election for officers to the November uniform election date.

(b) A governing body changing an election date under this section shall adjust the terms of office to conform to the new election date.

¹ Sections 11.0581 and 11.059 of the Texas Education Code discussed in this request apply by their terms to "independent school districts". This request is limited to that type of school district, which comprises the vast majority of Texas' school districts.

Chapter 11 of the Education Code contains additional requirements for the election of independent school district boards of trustees. Section 11.059 of the Education Code requires that a trustee of an independent school district must serve either a three or four year term. Elections for trustees serving three year terms must be held annually with one-third of the trustees, or as near to one-third as possible, up for election. Elections for trustees serving four year terms must be held biennially with half of the trustees, or as near to half as possible, up for election.

Section 11.0581(a) of the Education Code requires an election for trustees of an independent school district to be held on the same date as the general election of a municipality located in the school district, or the general election date for state and county officers (every even numbered year in November)². For many independent school districts, compliance with this joint-election requirement required changing the length of the terms of its trustees from three years to four years or vice versa. Section 11.059 permitted school districts to make this change, but such a change pursuant to this section must have been made by December 31, 2007. Your office issued Opinion GA-712 in April 2009, holding that the deadline in Section 11.059 of the Education Code precluded any change in the terms of a school district board of trustees after December 31, 2007. However, that opinion predated the enactment of House Bill 401 and the adoption of subsection 41.0052(a-1) of the Election Code.

I have received an inquiry from an independent school district whose trustees currently serve three year terms. The district complies with the joint-election requirement of section 11.0581 of the Education Code by holding its general election annually in May on the same date as the general election of a municipality located within the school district. If the board of trustees chooses to move its general election, pursuant to Election Code § 41.0052(a-1), from May to November, such a move would require the District to extend its trustees' terms from three years to four years in order to comply with sections 11.059 and 11.0581 of the Education Code because there are no other municipalities within the district that hold annual elections in November.

Finally, some districts have expressed concern that the municipality with which they conduct a joint election under section 11.059(a)(1) of the Education Code may change its own election date to November, potentially leaving the district unable to comply with section 11.059 if no other eligible municipality also holds an election on the current date.

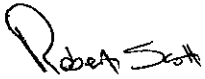
My questions are:

1. Does Section 41.0052(a-1) of the Election Code authorize an independent school district to change the election date for its board of trustees to the November uniform election date and make a change in the length of terms of its board of trustees despite the deadline in Section 11.059(e) of the Education Code?
2. If the answer to my first question is "no", may an independent school district make such a change in election date and terms of the board of trustees if no municipality continues to hold an election on the same date as the district?

² Subsection 11.0581(a)(3) also allows joint elections with a hospital district in limited circumstances.

Thank you for your consideration of this request. Should you need any additional information, please contact me or David Anderson, General Counsel, at (512) 463-9720.

Sincerely,

A handwritten signature in black ink that reads "Robert Scott". The signature is written in a cursive style with a large initial "R".

Robert Scott
Commissioner of Education