

The State of Texas
House of Representatives

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OPINION COMMITTEE



Jim Jackson
DISTRICT 115

October 19, 2011

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I.D. # 46848

RQ-1006-GA

The Honorable Greg Abbott
Attorney General of the State of Texas
Attn: Jason Boatright, Chair
Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Re: Request for Attorney General Opinion regarding ballot language and whether chapter 52 of the Election Code applies to all elections, including those elections governed by § 130.037 of the Education Code.

Dear General Abbott:

This letter is written to request your opinion on a matter of Texas law regarding ballot language for a proposition to approve the issuance of bonds. The issue is whether the recently amended Election Code, specifically § 52.072 (e)¹, applies to all elections, including those elections governed by § 130.037 of the Education Code. It appears that the Election Code would apply to all elections, including those involving education.

Background

Prior to the enactment of House Bill 360 during the 82nd Legislative Session ("H.B. 360")², a local taxing entity could write ballot language that obscured the intended use for additional funding that was requested in the proposed bond or tax increase. H.B. 360 expands the requirements for a proposition that is to appear on the ballot to specifically state the total principal amounts of bonds to be authorized, a general description of the purposes for which the bonds to be authorized, and the amount of tax increase or reduction for which approval is sought.

¹ The 82nd Legislature passed House Bill 360, which required certain ballot language for a proposition to approve the imposition, increase, or reduction of a tax or the issuance of a bond, effective September 1, 2011.

² H.B. 360 amended the Election Code to add Subsection (e) to § 52.072.

Analysis

The Texas Supreme Court has recently reaffirmed the longstanding rule that statutory language should be interpreted in accordance with the intent of the Legislature. *LTTS Charter Sch. Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 75 (Tex. 2011). *See also City of De Soto v. White*, 288 S.W.3d 389, 394 (Tex. 2009) ("[O]ur goal in construing a statute is to honor the Legislature's expressed intent."); *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 651 (Tex. 2006) ("[O]rdinarily the truest manifestation of legislative intent is legislative language—the words the Legislature chose."). Thus, the intent of the Legislature must be examined in order to determine whether the Election Code encompasses any election that takes place under the Education Code.

The legislative intent behind § 52.072 (e) of the Texas Election Code is to provide transparency to voters, so that they can be aware of any tax increases or bond issuances in actual dollar amounts and in plain language. Additionally, § 52.072 (e) requires a general description of the purpose for which the bonds are to be authorized, and requires that a proposition must specifically state any tax rate increase or reduction. Testimony during the hearing process affirmed the Legislature's intent to clarify ballot language in all elections, including local and community college elections. The amended section 52.072 adds Subsection (e): "In addition to *any other requirements imposed by law* for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the issuance of bonds or the imposition, increase, or reduction of a tax shall specifically state...(1)(A) the total principal amount of the bonds to be authorized..."³ (emphasis added). It appears that Legislature chose to amend the Election Code to include all propositions to approve the imposition, increase, or reduction of a tax or issuance of bonds, not just for one kind of bond or tax.

Additionally, the general provisions of the Election Code provide the applicability of the code and any conflicting statutes. Sections 1.002 (a) and (b) of the Election Code state: "This code applies to all general, special, and primary elections held in this state. This code supersedes a conflicting statute outside this code unless this code or the outside statute expressly provides otherwise." (Tex. Educ. Code Ann. § 1.002 (Vernon 2010)). While § 130.037 of Education Code does provide a cross reference to the Election Code⁴, Article 2.01 (b) has been recodified to § 203.004⁵, which merely provides a timeline for an election to occur. Without § 130.037 providing an exception to the Election Code, the Election Code will be the controlling statute.

Finally, under Tex. Gov't Code Ann. § 311.026 (a), the Election Code provision should prevail because if a general provision conflicts with a specific, the provisions are to be construed, if possible, to give effect to both. Therefore, the bond issue specifics must be

³ Act of May 27, 2011, 82nd Leg., R.S., H.B. 360 § 1 (to be codified as Tex. Elec. Code Ann. § 52.072(e)).

⁴ "If the coordinating board approves the establishment of the junior college district, it shall be the duty of the commissioners court or courts to enter an order for an election to be held in the proposed territory at the next authorized election date as provided in Article 2.01b of the Election Code..." Tex. Educ. Code Ann. § 130.037 (Vernon 2010).

⁵ "Date of Election: (a) Except as provided by Subsection (b), a special election shall be held on the first uniform election date occurring on or after the 36th day after the date the election was ordered. (b) If the election is to be held as an emergency election, it shall be held on a Tuesday or Saturday occurring on or after the 36th day and before the 50th day after the election is ordered ..." Tex. Elec. Code Ann. § 203.004 (Vernon 2010).

disclosed. Furthermore, if the two are irreconcilable, then under § 311.026 (b), the Election Code provision is the more specific and trumps the more general. If the Election Code provision is the more general, it again trumps the Education Code provision because of its later enactment.

Conclusion

Please issue an opinion as to whether the recently amended Election Code, specifically § 52.072 (e), applies to all elections, including those elections governed by § 130.037 of the Education Code.

Your attention to this matter is greatly appreciated. Please do not hesitate to contact Ryan Fisher (512-463-0468) in my Capitol Office or Kari King (512-463-0790) in my Committee Office if you have any questions regarding this request.

Best regards,

A handwritten signature in black ink, appearing to read "Jim", with a large, stylized initial "J" and a cursive "m".

Jim Jackson
State Representative
District 115
Chair, House Committee on Judiciary and Civil Jurisprudence