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OPINION COMMITTEE

*Texas House of Representatives
Committee on Environmental Regulation*

FILE # ML-47257-13
I.D. # 47257

April 12, 2013

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

RQ-1122-GA

RE: Opinion on whether it permissible under Texas law to create an overlapping Emergency Services District ("ESD") providing duplicative services, with the two ESDs charging more than the 0.1% property tax cap outlined in the state Constitution, as currently contemplated by the Pflugerville Fire Department.

Dear General Abbott:

It has come to my attention that Travis County's Emergency Services District 2 ("ESD 2"), also known as the Pflugerville Fire Department, currently levies a 0.1% ad valorem property tax, the maximum allowed under the Constitution, but seeks to levy additional revenue. As a result, as reported in the Austin American-Statesman, a proposal had been put forward to create a new district ("ESD 2A") that would be exactly coterminous with ESD 2 and provide the same services already offered by that district, for the sole purpose of increasing the ad valorem tax revenue available to the Pflugerville Fire Department.¹

Questions Presented

Since the authorities do not provide a clear answer as to the legality of the proposed overlapping ESDs with duplicative services in Travis County, I seek clarification of this issue. Specifically, I seek guidance on the following questions:

1. *Does the Texas Constitution permit overlapping ESDs?*

The Texas Constitution, Art. VIII, Sec. 48-e provides that:

Laws may be enacted to provide for the establishment and creation of special districts to provide emergency services and to authorize the commissioners courts of participating counties to levy a tax on the ad valorem property situated in said districts not to exceed Ten Cents (10¢) on the One Hundred Dollars (\$100.00) valuation for the support thereof. . . ."

¹ "Pflugerville area moving to create dual emergency districts to increase revenue". Farzad Mashhood, Austin American-Statesman, Jan. 13, 2013. Available online at <http://www.statesman.com/news/news/local-govt-politics/pflugerville-area-moving-to-create-dual-emergency-/nTwBt/> (last visited March 8, 2013).

It is unclear whether this provision means that *each* ESD can levy an ad valorem property tax of up to 0.1% of the valuation of a property covered, or whether it means that no greater than a 0.1% property tax *total* may be levied on a given property by all the ESDs that might serve it.

2. *Can an ESD be created that overlaps and provides duplicative services with another ESD?*

Health and Safety Code Sec. 775.0205(b) provides that if the territory in more than two ESDs overlaps, the overlapping territory is excluded from the later-created ESD. However, the statute implicitly permits territory to fall within two ESD's. Health and Safety Code 775.0205(a) provides that these overlapping ESDs may not provide duplicative services. More specifically, before the election required to create a new ESD, Sec. 775.018(g) requires the board of the earlier overlapping ESD to adopt a statement that specifies the types of emergency services the existing district provides in the overlapping territory. Health and Safety Code Section 775.0205(a) requires that the later ESD may not provide services duplicative of those listed in the 775.018(g) statement.

It is my understanding that the type of overlapping ESDs permitted under 775.0205 have been enacted by Comal and Hill counties. These counties have created overlapping ESDs, however, in both cases these districts are intended to provide separate and non-duplicative services: one district for fire services, and one for emergency medical services. The proposed Pflugerville-area ESD 2A, on the other hand, would provide fire prevention and emergency medical services identical to those already provided by ESD 2, as reported in the referenced article. This seems to fall afoul of Section 775.0205(a).

3. *Where two overlapping ESDs already exist, can one be amended to provide duplicative services?*

It is unclear whether, once two ESDs already apply to a given overlapping territory, anything prevents one or both of the ESDs from later adding services that are duplicative. To my knowledge, nothing in the statute *explicitly* prevents two ESDs from providing duplicative services to an overlapping territory, so long as the services are not provided in the 775.018(g) statement the earlier district produced pre-election.

4. *As above or otherwise, is the Pflugerville-area Travis County ESD 2A, as currently proposed, permissible under existing Texas law?*

Thank you in advance for your consideration of this matter. Please do not hesitate to contact me if you need additional information regarding this request.

Sincerely,



Representative Patricia Hallless

Chair, House Committee on Environmental Regulation